

[Redacted]

From: Michel, Frederic <[Redacted]>
Sent: 24 January 2011 11:07
To: ZEFF JON; SMITH, Adam
Subject: Fwd: News/Sky - Strictly Private and Confidential (0012561-0000367)
Attachments: CO-#13334122-v1-Opinion_of_Lord_David_Pannick_QC.PDF; ATT00001.htm; CO-#13326012-v9-Letter_to_DCMS_re_UIL_Consultation.pdf; ATT00002.htm

Please see attached
Fred

Sent from my iPhone

Begin forwarded message:

From: [Redacted]
Date: 24 January 2011 11:00:30 GMT
To: [Redacted] >, "Michel, Frederic"
Cc: [Redacted]
Subject: Fw: News/Sky - Strictly Private and Confidential (0012561-0000367)

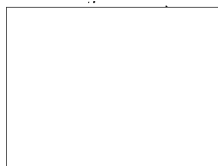
From: [Redacted] AllenOvery.com <[Redacted]@AllenOvery.com>
To: [Redacted] Culture.gsi.gov.uk <[Redacted]@Culture.gsi.gov.uk>

Sent: Mon Jan 24 10:58:54 2011
Subject: News/Sky - Strictly Private and Confidential (0012561-0000367)

Dear [Redacted]

Please find attached a letter from [Redacted]

Kind Regards



Allen & Overy LLP

www.allenoverly.com/antitrust

One Bishops Square
London
E1 6AD

Tel: [Redacted]
DDI: [Redacted]
Fax: [Redacted]

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[Redacted]

From: Michel, Frederic [Redacted]
Sent: 24 January 2011 10:06
To: ZEFF JON; SMITH, Adam
Subject: FW: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Attachments: Final Submission to Ofcom - 23 November - non confidential version.pdf; ATT00001.htm; CO-#13207048-v18-Submission_to_Secretary_of_State (3).pdf
Importance: High

From: Michel, Frederic
Sent: 24 January 2011 09:54
To: Jon Zeff (jon.zeff@culture.gsi.gov.uk); Adam SMITH (Adam.Smith@Culture.gsi.gov.uk)
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Importance: High

Jon/Adam,

Attached are the non-confidential versions of our submissions for publication on Tuesday if the SoS goes ahead with a statement.

We will be sending further documents in the morning regarding our views of the process suggested by the SoS and further details on the UIL.

Warm regards

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

[Redacted]

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News Corporation

News Corporation/ British Sky Broadcasting Group Plc

Submission to Ofcom

1. EXECUTIVE SUMMARY AND CONCLUSION

- 1.1 This submission is made by News Corporation ("News Corp") in respect of the proposed acquisition by News Corp of the entire issued and to be issued share capital of British Sky Broadcasting Group plc ("Sky") that News Corp does not already own (the "Transaction").
- 1.2 The Secretary of State is considering whether to take appropriate measures to protect "legitimate interests" pursuant to Article 21(3) EUMR and issued a European Intervention Notice in relation to the Transaction on 4 November 2010. Ofcom issued an Invitation to Comment on media public interest considerations in relation to the Transaction on 5 November 2010.
- 1.3 This submission addresses issues which are relevant to Ofcom's initial investigation of the Transaction in relation to the public interest consideration specified in section 58(2C)(a) of the Enterprise Act.
- 1.4 This submission is structured as follows:
 - (a) **Section 2: Background to the parties and the Transaction**
 - (b) **Section 3: Legal framework and relevant public interest consideration and sufficiency of plurality**
 - (c) **Section 4: The Transaction will not change the quality of editorial influence over Sky News**
 - (d) **Section 5: No impact on setting of the news agenda**
 - (e) **Section 6: Sufficient plurality post-Transaction**
- 1.5 News Corp has engaged FTI Consulting and Perspective Consulting to prepare reports on media public interest considerations relevant to the Transaction. These reports are provided in **Annex I** and **Annex II** respectively.
- 1.6 A **Glossary** of abbreviations used in this submission is provided in **Annex III**.
- 1.7 In summary:

- (a) In the UK, News Corp is mainly a newspaper enterprise for the purposes of the Enterprise Act and Sky is a media enterprise serving mainly a TV audience. This means that the only audience for whom plurality could conceivably be reduced as a result of the Transaction is a cross-media audience.
- (b) The Transaction involves News Corp acquiring full legal control of Sky over which News Corp already has commercial influence and a degree of control, as recognised by the UK authorities.

- (c) In relation to TV broadcasting, commercial influence does not equate with editorial influence. This was found by the CC and confirmed by the CoA in the Sky/ ITV case. It cannot be assumed that the Transaction will bring about a significant actual change in the editorial independence of Sky News.
- (d) Furthermore, the regulatory framework and the deep culture of editorial independence in UK TV broadcasting combine to protect internal plurality within the media enterprise that will serve a cross-media audience post-Transaction.
- (e) In any event, even if Ofcom wanted to assess the Transaction on the basis that there will be no internal plurality constraint in relation to Sky News post-Transaction, there would be a sufficient plurality of voices available to cross-media audiences post-Transaction. The strength, number and range of cross-media voices has increased since enactment of the Communications Act and there is every reason to believe that this cross-media diversity will continue post-Transaction.
- (f) We also considered, following the Sky/ ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International. This grouping was found to be of a minimal size (0.3% of the UK population).

1.8 This submission and its annexes contain confidential information which should not be disclosed to third parties without News Corp's prior written consent.

2. BACKGROUND TO THE PARTIES AND THE TRANSACTION

The Parties

- 2.1 **News:** News Corp is a diversified global media company with operations in eight industry segments: filmed entertainment; television; cable network programming; direct broadcast satellite television; integrated marketing services; newspapers and information services; book publishing; and other. News Corp had total assets as of 30 June 2010 of approximately US\$54 billion and total annual revenues of approximately US\$33 billion for the fiscal year ended 30 June 2010.
- 2.2 The activities of News Corp are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and Latin America.
- 2.3 News Corp is a Delaware corporation whose shares are listed on the New York and Australian Stock Exchanges. News Corp has a secondary listing on the London Stock Exchange.
- 2.4 In the UK, News Corp's main activities include (through News International Limited) the provision of newspapers and information services and (through HarperCollins Publishers Limited) book publishing.
- 2.5 News Corp owns 39.14% of the shares in Sky, and is entitled to exercise 37.19% of the voting rights in Sky. According to the UK CC, News Corp at present has a degree of control of Sky.¹
- 2.6 **Sky:** Sky is a holding company for a number of subsidiaries, which are active in a variety of economic sectors in the UK and Ireland, including:
- (a) the creation of "linear" TV channels (i.e., channels offering a series of programmes which are available to view at a scheduled time of broadcast). Sky's linear pay TV channels are supplied on a wholesale basis to cable, DTT, and IPTV operators for them to retail to their subscribers in the UK and Ireland. Sky also broadcasts a number of its TV channels FTA (or free-to-view) via DTH satellite and via DTT;
 - (b) the retail distribution of Sky's and third parties' linear pay TV channels via DTH, IPTV, the Internet (via *Sky Player*),² and mobile technologies;
 - (c) the retail distribution of Sky's and third parties' "audiovisual programming" (referring to all types of content that satisfies consumers' demand for audiovisual services, regardless of how they are made available to consumers) via the services known as *Sky Anytime* and *Sky Player*;
 - (d) the provision of retail telephony and broadband services to Sky's residential DTH subscribers;
 - (e) the provision of conditional access, access control, and EPG services to broadcasters and interactive service providers on Sky's DTH platform;
 - (f) through Sky's advertising sales house, Sky Media, the sale of advertising and sponsorship on Sky's and third parties' channels, and on other Sky services.
- 2.7 Sky is a public company whose shares are listed on the London Stock Exchange.

¹ CC Report, paragraph 5.64.

² *Sky Player* is an online application available over the Internet via PCs, games consoles and other consumer electronic devices.

The Transaction structure

- 2.8 The Transaction contemplates the acquisition by News Corp of Sky's shares it does not already own. After the implementation of the Transaction, News Corp would exercise sole control over Sky.
- 2.9 The Transaction is subject to the City Code on Takeovers and Mergers and would be implemented by way of a public offer or court approved scheme of arrangement.

Timetable and regulatory review

- 2.10 On 15 June 2010, News Corp made an announcement pursuant to Rule 2.4 of the City Code on Takeovers and Mergers of a possible offer to acquire the entire issued and to be issued share capital of Sky that News Corp does not already own.
- 2.11 Pursuant to a Cooperation Agreement entered into by News Corp and Sky on 15 June 2010, Sky has agreed to co-operate with News Corp in seeking any necessary merger clearances in relation to the Transaction from the relevant merger control authorities.
- 2.12 The Transaction is a concentration with a Union dimension and was notified to the Commission on 3 November 2010. The Commission's review of the Transaction at Phase I is pending.

Rationale of the Transaction

- 2.13 The acquisition of the entire share capital of Sky constitutes an opportunity for News Corp to achieve financial consolidation for a company with which it has been closely associated for a long time, and which is mainly active in a sector that constitutes a core business for News Corp.³
- 2.14 The Transaction will allow News Corp to achieve, among others, the following two main objectives: (1) it will allow News Corp to diversify the geographic scope of its activities by acquiring a significant presence in two territories, namely the UK and Ireland, where, as of today, News Corp's activities in the TV sector are rather limited; and (2) it will allow News Corp to diversify its sources of earnings by consolidating a business, such as Sky's business, whose earnings are less dependent on advertising than other News Corp activities in the UK/ Ireland and elsewhere (and more linked to subscription fees paid by TV viewers).

³ News Corp has activities in the pay TV sector outside the UK and Ireland.

3. LEGAL FRAMEWORK: RELEVANT PUBLIC INTEREST CONSIDERATION AND SUFFICIENCY OF PLURALITY

Introduction

- 3.1 The Secretary of State is considering whether to take appropriate measures to protect "legitimate interests" pursuant to Article 21(3) EUMR and issued a European Intervention Notice in relation to the Transaction on 4 November 2010. Pursuant to such European Intervention Notice, the Secretary of State asked Ofcom to investigate and report to him in relation to the identified public interest consideration described in paragraphs 3.5 to 3.7 below. As Ofcom will be aware, News Corp has made detailed submissions to BIS explaining why, in its view, there is no substantive basis for intervention. In particular, the Transaction does not give rise to "exceptional circumstances" as to justify intervention in accordance with the DTJ Guidance, paragraphs 8.2 and 8.4, and we submit that this background should inform Ofcom's advice to the Secretary of State to enable him to determine conclusively the relevance of the identified public interest consideration.
- 3.2 As Ofcom is aware, the scope of its report and of the following determinations to be taken by the Secretary of State, is limited to plurality considerations. News Corp is aware that a number of third parties have made submissions that the Transaction will have detrimental effects on competition (for example, it has been suggested that the merged group may choose to bundle News Corp newspapers with Sky subscriptions with anticompetitive effects). Such theories are, in any event, unsubstantiated and are based on hypothetical assertions of what "may" or "might" occur following the Transaction, without evidence. They speculate on commercial behaviour and its impact on competition and therefore fall under the exclusive competence of the Commission.⁴
- 3.3 In light of the CC approach in the Sky/ ITV case, as endorsed by the CoA, an analysis of plurality involves the following:
- (a) a **qualitative** assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality, rather than a bare assessment of the number of controllers;
 - (b) in terms of **content types**, the focus of the analysis should be the provision of news, bearing in mind that any activities of Sky or News Corp in relation to the supply of raw news or content or other services to third parties which do not confer control over editorial policy are **not** relevant to the public interest consideration;
 - (c) in terms of **audiences**, the Transaction can only conceivably affect a cross-media audience, if at all; socio-economic groupings are not themselves relevant audiences for statutory purposes, but only categorisations which may apply to some members of an audience (or members of a readership).
- 3.4 After establishing what qualitatively changes post-Transaction, compared with pre-Transaction in respect of the provision of news to a cross-media audience, it is then necessary to assess whether or not that change would result in insufficient plurality in the UK.

The relevant public interest consideration

⁴ The BIS statement accompanying the European Intervention Notice notes that, given the size of the acquisition, the Commission will investigate the proposed acquisition on the grounds of competition and it will announce its own decision by 8 December.

- 3.5 The relevant public interest consideration, on which the Secretary of State has asked Ofcom⁵ to report, and we understand from our correspondence with BIS, is set out in section 58(2C)(a) of the Enterprise Act:

"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience."

- 3.6 The manner in which an assessment of the sufficiency of media plurality is to be conducted was considered in detail by the CC in the Sky/ ITV case. The CC took into consideration views expressed by Ofcom, written and oral submissions from a number of interested parties, contributions from academic and other experts, literature concerning plurality and the Parliamentary debates connected with the relevant provisions, in coming to its view as to what an assessment of plurality required. The CC's approach was accepted and followed by the Secretary of State.

- 3.7 On the one important point on which the CC's approach was challenged in the CAT, the CC's approach was ultimately endorsed by the CoA. The CoA concluded that, when assessing the plurality of the aggregate number of relevant controllers of media enterprises and considering the sufficiency of that plurality, the CC may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another. In light of this, it should not be necessary for Ofcom to re-open the debate in areas where the CC has already made clear findings.

Plurality requires an assessment of the range and number of voices

- 3.8 In Sky/ ITV, the CC summarised its process as follows:

*"We took the concept of plurality of persons with control of media enterprises to refer both to the range and number of persons with control of media enterprises. We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences. We thought it important to draw a distinction between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences. We also thought that it was appropriate to distinguish between the range of information, and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)."*⁶

- 3.9 The CoA confirmed that an analysis of plurality involves more than a bare assessment of the number of controllers and encompasses an assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality.

*"The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well. Certainly it has that meaning in subsection (2B). We consider that it does so in subsection (2C)(a) as well."*⁷

- 3.10 The so-called "deeming provision" in section 58A(4) and (5) of the Enterprise Act means enterprises may be treated as ceasing to be distinct if there is a change, if at all, in the quality of control (including from the lowest, material influence, to the highest, legal control) **but** does not preclude additional qualitative analysis.

⁵ In this submission, we refer to the assessment conducted by the Secretary of State and on which the Secretary of State has asked Ofcom to report.

⁶ CC Report, paragraph 30.

⁷ CoA Judgment, paragraph 90.

- 3.11 It is therefore necessary for the Secretary of State to consider to what extent the Transaction changes the *status quo ante* (in which News Corp already has a degree of control of Sky), so as to create a situation of insufficient plurality.

Focus of analysis should be news

- 3.12 The CC decided in Sky/ ITV that, in terms of content, the best metric to assess the range of information and views presented to the public (and to assess plurality) was the provision of news:

*"We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences."*⁸

*"The parties overlap in a broad range of content, but news and current affairs are the genres most closely connected with the formation of public opinion about issues of national significance through the communication of a range of information and views. National news is an important genre of programming for both ITV and BSkyB. Considering all content genres, including current affairs, documentaries and satire, viewers rank news first in terms of 'societal importance', with a majority of the public saying that news helps them feel part of the democratic process. We also believe that news provision is a reasonable indicator of, and better defined than, a wider range of other content relevant to the formation of public opinion about issues of national significance. We therefore focused on national news and refer to the range of information and views communicated to audiences through the news as the 'plurality of news'."*⁹

- 3.13 Consideration of other types of content provision, as raised in Ofcom's consultation document, does not assist in assessing plurality and, particularly, in light of the CC's clear finding in Sky/ ITV other content types should be regarded as irrelevant to a plurality analysis. Indeed, to date this seems to have been accepted even by third parties publicly expressing views about the merger who have focused their interest on news.

Supply of news content to broadcasters (in particular Channel 5) is not within the scope of the legal consideration of sufficiency of plurality

- 3.14 The Secretary of State is required to consider only the plurality of persons with control of *media enterprises*.
- 3.15 For the purposes of section 58 of the Enterprise Act, an enterprise is a media enterprise if it "consists in or involves broadcasting".¹⁰ A "media enterprise" is therefore **not** one which consists in or involves the provision of news content or services to broadcasters.
- 3.16 That the supply of news content or services is not itself the focus of the plurality assessment required by section 58 of the Enterprise Act is logical and consistent with the overall regulatory framework, where the focus is not on the provider of content or ancillary services but on the owner of channels and programming and editorial control. For example, the entity that is licensed and regulated to provide a broadcasting service under the Communications Act is "*the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control*

⁸ CC Report, paragraph 5.10.

⁹ CC Report, paragraph 5.32.

¹⁰ Section 58A(2), Enterprise Act.

of the content of individual programmes or of the broadcasting or distribution of the service)" (our emphasis).¹¹

3.17 This has important implications for assessment of sufficiency of plurality in relation to the Transaction. Any activities of Sky or News Corp in relation to the supply of raw news or content or other services to third parties which do not confer control over editorial policy are **not** within the scope of the public interest consideration.¹² In particular:

- (a) although Sky provides raw news data and content to Five, Channel Five is the relevant broadcasting licensee and controls the editorial policy of its channel;
- (b) although Sky has won the contract to supply news content to IRN, it does not control the editorial policy of the radio news service or the individual radio stations.

3.18 The regulatory framework thus draws a fundamental distinction between transactions and interests which confer influence over editorial policy and those which do not. Only the former are within the scope of a plurality assessment. The plurality assessment must focus on whether there is a sufficient plurality of persons exercising editorial control over media enterprises.

Concept of a relevant audience

3.19 The concept of an "audience" for a particular media outlet must be based on those people who are exposed to the views and opinions of that media outlet and who could therefore conceivably be impacted by any alteration in its presentation of the news. For a newspaper the assessment must relate to the voices available to the UK readership. For a television broadcaster the assessment must relate to the voices available to the audience which watches TV broadcasts in the UK. For a merger between a newspaper enterprise and a TV broadcaster the relevant audience is necessarily a cross-media audience. It is in this context that any possible reduction of plurality and its impact on "sufficiency" needs to be assessed.

3.20 For statutory purposes, socio-economic groupings or regions or "nations" of the UK are not the starting point of the analysis and are not themselves audiences. These groupings are not an "audience served by an enterprise", they are categorisations which may apply to some members of an audience (or members of a readership).

3.21 In Sky/ITV, when considering the audiences reached by News International and Sky, the CC concluded that there were no fundamental differences between socio-economic groupings or between regions, or "nations" of the UK.

"We investigated the extent of such differences further using data from TGI and Touchpoints. The results of this analysis are set out in Appendix I. Our view is that, whilst viewing shares and readership vary somewhat by socio-economic group, there are no fundamental differences in the significance of ITV, BSkyB and News International to particular sections of the UK population. Nor did we find any fundamental differences in the significance of ITV, BSkyB and News International between nations within the UK."¹³

3.22 As explained in the report by FTI at Annex I, there are no fundamental differences in the significance of Sky News and News Corp to particular sections of the UK population or

¹¹ Section 362(2), Communications Act.

¹² It is noted that the CC did not aggregate either Five News or radio services receiving news content from Sky into Sky News' audience share when it reviewed the Sky/ITV transaction.

¹³ CC Report, paragraph 5.50.

nations within the UK. The Transaction will not result in there being insufficient plurality in any sections of the UK population or nations within the UK.¹⁴

The Transaction can only conceivably affect a cross-media audience, if at all

3.23 In the UK, News Corp is mainly a newspaper enterprise for the purposes of the Enterprise Act¹⁵ and Sky is a media enterprise serving mainly a TV audience.¹⁶ This means that the only audience for whom plurality could conceivably be reduced as a result of the Transaction is a cross-media audience:

- (a) the number of controllers of **television** news broadcasters would not reduce as a result (Sky would remain under entirely separate control from the other main television news broadcasters: BBC, ITV and Channel 4)¹⁷; and
- (b) the number of controllers of **newspaper** enterprises would not reduce as a result (News International would remain in entirely separate ownership from the other main UK newspaper groups: the Daily Mail and General Trust, Trinity Mirror, Northern & Shell, the Telegraph Media Group, the Guardian Media Group, Independent News and Media and the Pearson Plc).

3.24 The only context in which the number of controllers of news sources for any audience would conceivably have reduced would be examining an audience's consumption of news across multiple media, taking into account at the very least exposure to both television news and newspapers.

"Sufficiency" of plurality for relevant audience pre and post-Transaction

3.25 Once the Secretary of State has established what qualitatively changes post-Transaction compared with pre-Transaction, and for which audience, he must then assess whether or not that change will result in there being insufficient plurality in the UK.

3.26 The meaning of "sufficient plurality" is not developed in the Enterprise Act. The Explanatory Notes to the Communications Act state in relation to section 58(2C)(a) that "[t]he first limb of this subsection is concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons".¹⁸

3.27 There is no indication that Parliament considered plurality to be insufficient at the time of enactment of the Communications Act which represents a relaxation of controls on media ownership and, particularly, cross-media ownership. In these circumstances, it would be legitimate to assume that intervention on plurality grounds is warranted only when it reduces plurality to a level which is materially below that subsisting at the time of enactment of the relevant legislation. In such a rich and diverse media environment, which is even more true today than in 2002, it cannot be established that the Transaction gives rise to serious public interest concerns.

3.28 The CC described its process as follows in Sky/ITV:

¹⁴ See, further, FTI Report, paragraphs 6.19 to 6.23.

¹⁵ A "newspaper enterprise" means an enterprise consisting in or involving the supply of newspapers.

¹⁶ News Corp has other interests in the UK that are not relevant for present purposes, including the supply of content that is available on the Fox channels.

¹⁷ Ofcom has also requested data as to the audience share of Fox News in the UK. While it is true that News Corp does already control the Fox News Channel and that it could therefore be alleged that bringing Fox News and Sky under common control would reduce the number of controllers of news broadcasters, this would fail to take into account the exceedingly marginal position of Fox News in the UK. Fox News' share of news viewing is 0.08% (BARB, January to October 2010).

¹⁸ Explanatory Note 802.

"We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition. Moreover, in considering the sufficiency of persons with control of media enterprises, we have regard to the implications of the level of control exercised for the range of information and views available. We considered this in relation to both internal and external plurality."¹⁹

3.29 In Sky/ ITV, the CC (and the Secretary of State) treated Sky and News Corp as a single enterprise by virtue of News Corp's degree of control over the competitive policy of Sky. It found that, as a result of the transaction it was examining in that case, Sky had acquired material influence over ITV, an important UK broadcast news provider. Even in those circumstances the CC concluded that sufficient plurality remained for each major audience in the UK, both for a TV audience and a cross-media audience (taking into account the readership of News International's newspapers). As Ofcom will be well aware, Sky was required to divest its shareholding in ITV to below 7.5%, for reasons connected with **competition** and not media plurality.

3.30 In fact, a UK cross-media audience has actual or potential²⁰ access to a wide range of sources, including:

- (a) all TV news broadcast in the UK;
- (b) all national and local radio services available in the UK;
- (c) all national, daily and Sunday newspapers circulating in the UK;
- (d) all news magazines circulating in the UK; and
- (e) all news available online, including but not limited to news available on dedicated news websites, blogs and via aggregators.

Conclusion

3.31 Given the conclusions reached by the CC and the Secretary of State in the Sky/ ITV case, it is extremely difficult to see how a transaction which does not involve ITV (with its relatively greater broadcast news audience share), and the only impact of which is a change in the quality of control between two enterprises which were deemed, in any event, to form a single enterprise in the Sky/ ITV case, could have any adverse impact on the sufficiency of plurality for any audience within the UK. In any event, the remainder of this submission will show that this Transaction cannot jeopardise the editorial independence of Sky News, has no impact on setting the news agenda and does not result in there being insufficient plurality of voices for any relevant audience.

¹⁹

CC Report, paragraph 5.15.

²⁰

Section 58A(7)(b), Enterprise Act states that the criteria for determining who can be treated as comprised in an audience "may allow for persons to be treated as comprised in an audience if they are only potentially members of it".

4. THE TRANSACTION WILL NOT CHANGE THE QUALITY OF EDITORIAL INFLUENCE OVER SKY NEWS

Introduction

- 4.1 When analysing the possibility of the Transaction having an impact on plurality, it is important to distinguish between, on the one hand, the degree of News Corp's control over Sky's commercial and competitive policy and, on the other hand, whether such control would result in influence over the editorial policy of Sky News. Whilst the former is relevant for jurisdictional purposes, it is only the latter that is relevant to a plurality assessment. The two concepts are not aligned and this has been accepted by the CC and, ultimately, the CoA in the Sky/ ITV case.
- 4.2 News Corp already has a degree of commercial influence over Sky which results in "control" for Enterprise Act purposes, as recognised by a number of UK authorities. However, despite this degree of control over Sky, News Corp does not currently exert such control to influence editorial decisions of Sky News.
- 4.3 The key question is, therefore, whether the degree of News Corp's influence over Sky News' editorial agenda would change as a result of the Transaction, and whether plurality would be compromised as a result. The answer is clear. Although the Transaction would result in an acquisition of full legal control over Sky, it will not change the fact that Sky News enjoys and will continue to enjoy editorial independence. The same factors that have preserved editorial independence to date, as recognised by the CC, will ensure editorial independence going forward. Therefore, plurality cannot be compromised by the Transaction regardless of any change in the level of News Corp's control over Sky.

News Corp already has a degree of control over Sky

- 4.4 News Corp already has a degree of commercial influence over Sky which results in "control" for Enterprise Act purposes. This has been recognised by a number of UK authorities and is also evidenced by a number of factors that highlight the relationship between News Corp and Sky.
- 4.5 The UK authorities have found that News Corp currently has a degree of "control" over Sky:
- (a) The OFT stated that "[BSkyB's] largest shareholder is News Corporation (News Corp) with a 39.02 per cent stake, along with several directorships, which is sufficient to confer control over BSkyB."²¹
 - (b) The CC assumed that, for the purposes of its analysis of the impact of the ITV acquisition on plurality of news, "News Corporation had material influence over BSkyB."²² On that basis, it assessed the impact of the acquisition on plurality of news including the links with News Corp and concluded that plurality was not affected. This conclusion was endorsed by the UK Government.
 - (c) Ofcom took into account the links between News Corp and Sky in its plurality assessment on the basis that it treated "all media enterprises under the same ownership or the same control as being controlled by one person."²³ It conducted an in-depth review of the Sky/ ITV transaction on the basis that it established an ownership link between ITV and News Corp whereby News Corp and Sky were deemed to be part of the same enterprise.

²¹ OFT Report, paragraph 25.

²² CC Report, paragraph 5.64.

²³ Ofcom Report, paragraphs 4.4-4.7.

- (d) The CAT Judgment recites that Ofcom, in its initial report, "assumed that Sky is or may be controlled by News Corporation (39.1% shareholding held through a number of News Corporation subsidiaries)."²⁴

4.6 The factors which contributed to these findings remain relevant, in particular those concerning News Corp's shareholding in, and representation on, the Board of Sky.

(a) **Shareholding**

4.7 News Corp was a founding shareholder of Sky and has remained its major shareholder since it was listed in 1994. Currently, News Corp holds 39.14%²⁵ of the issued equity capital of Sky and is the largest shareholder in Sky. As at 28 July 2010, there were only two other shareholders with more than 3% of the equity capital of Sky, such shareholdings being 3.10% and 5.02%.²⁶

(b) **News Corp's representation on the Board of Sky**

4.8 Since the public listing in 1994, at any given time there have been between four and five directors on the Board of Sky that were (and are) affiliated with News Corp at the same time as holding their office. The position of Chairman has been occupied by Mr. Rupert Murdoch (1999 – 2007) and Mr. James Murdoch (2007 – present). Currently, there are 14 members of Sky's Board of Directors comprising 12 non-executive directors and two executive directors. The four non-executive directors which currently hold executive positions at News Corp are as follows:

- (i) **Mr. James Murdoch** (non-executive director and Chairman of Sky) was the CEO of Sky with effect from 4 November 2003. On 7 December 2007, he was appointed non-executive Chairman of Sky, having relinquished the role of CEO. Mr. Murdoch is Chairman and Chief Executive, Europe and Asia, at News Corp and is a member of News Corp's Board of Directors. Between May 2000 and November 2003, he was Chairman and CEO of the Star group (a News Corp wholly owned subsidiary).
- (ii) **Mr. David F. DeVoe** (non-executive director of Sky) is an executive director at News Corp and holds the position of both the Chief Financial Officer and Senior Executive Vice President of News Corp. Mr DeVoe has been a Director of News Corp and its CFO since October 1990. Mr. DeVoe has served as Senior Executive Vice President of News Corp since January 1996. Mr. DeVoe has been a director of NDS Group plc since October 1996.
- (iii) **Mr. Thomas Mockridge** (non-executive director of Sky) is the CEO of Sky Italia and the Chief Executive, European Television of News Corp where he oversees News Corp's television operations in Europe (outside the UK). Prior to joining Sky Italia, Mr. Mockridge held various roles at Star Group Limited and was previously CEO of Foxtel, News Corp's pay TV joint venture with Telstra.
- (iv) **Mr. Arthur Siskind** (non-executive director of Sky) is an executive director of News Corp and the Senior Advisor to the Chairman of News Corp. He was appointed as a director of Sky on 19 November 1991. Mr. Siskind has been the Senior Advisor to the Chairman of News Corp since January 2005. Mr. Siskind has been an Executive Director of News Corp since

²⁴ CAT Judgment, paragraph 247.

²⁵ 37.19% voting interest.

²⁶ Sky 2010 Annual Report.

1991 and was Group General Counsel of News Corp from March 1991 until December 2004.

(c) **Roles and responsibilities of the non-executive Chairman of Sky, Mr. James Murdoch**

4.9 From November 2003 until late 2007, Mr. James Murdoch was the CEO of Sky.²⁷ During that time, Mr. James Murdoch appointed and led the current senior management team of Sky. Mr. James Murdoch played a key role in devising and delivering Sky's key operational and strategic targets.

4.10 When Mr. James Murdoch announced that he wished to step down from Sky in 2007 and rejoin News Corp as its Chairman and Chief Executive of its European and Asian businesses, the Sky Board requested that he carry on in the capacity of non-executive Chairman.

4.11 [REDACTED].²⁸

Commercial influence does not equate with editorial influence

4.12 As stated above, the scenario which the Secretary of State must address in the current case is not a change from no control to full control over Sky. Instead, the Secretary of State must consider whether a change from News Corp's current degree of control over Sky to News Corp gaining full legal control of Sky would result in insufficient plurality for any relevant audience in the UK.

4.13 Despite its degree of control over Sky, News Corp does not currently exert editorial influence over Sky News.

4.14 In this context, it is important to refer to the CoA Judgment in Sky/ ITV:

"when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another; whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control."²⁹

4.15 The implication of this judgment is that one cannot assume that commercial influence necessarily translates into editorial influence. Equally, increasing the level of control to full legal control does not translate into the loss of Sky News' editorial independence.

4.16 In Sky/ ITV, the CC has recognised the editorial independence of Sky News:

"BSkyB and the BBC, which both provide news in-house, emphasized the role of their editorial staff in determining the day-to-day content of their programming. BSkyB told us that all editorial decisions regarding the content of BSkyB's various news services were taken by the Sky News editorial staff. BSkyB board's role was to consider the competitive strategy and funding of BSkyB's news content at a high level; it had no role in the day-to-day editorial control of Sky News content on television or online. We received no evidence from third parties to suggest

²⁷ Prior to 2003, Mr. James Murdoch was an executive of News Corp, as were all prior CEOs of Sky.

²⁸ [REDACTED: CONTAINS BUSINESS SECRETS].

²⁹ CoA Judgment, paragraph 121.

that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda.³⁰

- 4.17 For the reasons set out below, it is clear that a stepping up in the level of News Corp's degree of control over Sky to full legal control will not translate into a corresponding exercise of influence over Sky's editorial policy.

Sky News' editorial independence will be maintained

- 4.18 Editorial decisions are not subject to alteration as a result of the change of a shareholders' level of commercial influence. The CC report in the Sky/ ITV case confirms that editorial decisions in TV news broadcasting are not taken at board level:

"We note that both BSkyB and ITV have said that the editorial content of ITV news would be unlikely to be a matter of strategic importance. We received no evidence to suggest that it features as a key policy objective for either company. We note, for example, that ITV's strategy update on 12 September 2007 made no mention of particular strategic objectives for news (with the exception of statements about a reduction in regional news). Our view that BSkyB's influence over ITV is likely to relate to matters of strategic importance suggests that BSkyB is unlikely to have the ability to exert material influence over ITV in relation to the editorial content of news.

In addition, the evidence that we received suggested to us that there was a strong commitment to editorial independence across television news broadcasting which would lead to editors resisting any direct board intervention or intervention from shareholders to set the news agenda. Both ITV and ITN demonstrated a strong commitment to editorial independence. ITV said that 'it is not conceivable that a shareholder in ITV could successfully influence the editorial decisions of its news programming'. ITN had in the past broadcast news stories that were unfavourable either to the channel on which the news was provided (eg in relation to phone-in quizzes on Channel 4) or to other commercial interests (eg advertisers). We saw no reason why this should not continue" (our emphasis).³¹

- 4.19 The acquisition by News Corp of full legal control over Sky would not jeopardise the editorial independence of Sky News for the following reasons:
- (a) Sky's editorial policy is not a matter for Board determination. In fact, to date, editorial policy has not been a debated issue at Board level.
 - (b) As recognised by the CC, despite its commercial influence over Sky, News Corp has not sought to influence the editorial policy of Sky News.
 - (c) The Sky News editorial directors are experienced individuals, each with expertise to manage and direct the editorial policy of Sky News.
 - (d) There is no evidence that independent directors have had to "defend" the editorial policy of Sky News against influence by News Corp executives.
 - (e) News Corp has no special arrangements with Sky News which would confer on it control over editorial policy.

³⁰ CC Report, paragraph 5.57.

³¹ CC Report, paragraphs 5.67 and 5.68.

- 4.20 In addition, the regulatory landscape makes a significant contribution to safeguard a plural media environment. In relation to TV broadcasting, the Broadcasting Code requires that television news is presented impartially. This was recognised as an important factor by the CC:

*"In television news, existing regulatory mechanisms—including quality controls (eg in the Broadcasting Code), requirements for impartiality and quotas for television news and current affairs programming — reduce the scope for influence over editorial decisions by owners of television channels which broadcast news"*³²

- 4.21 Furthermore, the CC considered that the regulatory landscape applicable to news broadcasters which protects editorial independence, can be contrasted with the position vis-à-vis newspapers:

*"There are fewer regulatory restrictions on newspapers than on television news and, in particular, newspapers are able and expected to take an explicit editorial position in relation to topical issues. All respondents to our questionnaires told us that day-to-day editorial decisions for newspapers and allied websites were made by editors and journalists, and not by board directors or shareholders. However, boards usually play some role in the appointment of editors, and may also determine the overall political stance in line with the target audience for a particular newspaper title."*³³

- 4.22 Therefore, in order for Sky News to remain a news broadcaster it must remain impartial in the presentation of news. In particular, Sky News could not take one party line without risking losing its licence. Finally, Sky's editorial agenda is the outcome of a complex interplay of multiple factors, described in more detail in section 5 below.

Conclusion

- 4.23 News Corp's ability and incentive to influence the Sky News editorial agenda will not be affected by the Transaction. There is every reason to believe that the current situation will continue. Sky's editorial policy is shaped by a complex interplay of multiple factors described in more detail in section 5 below, against a regulatory framework which safeguards over-representation of one viewpoint. It is clear that the editorial independence of Sky News would not be jeopardised following the Transaction, and there is no evidence to support the assertion that it would be.

³²

CC Report, paragraph 5.54.

³³

CC Report, paragraph 5.58.

5. **NO IMPACT ON SETTING OF THE NEWS AGENDA**

Overview

- 5.1 The plurality analysis also involves the assessment of the ability to "*influence opinions and control the agenda*" (our emphasis).³⁴
- 5.2 For the Transaction to influence or control the wider news agenda, two necessary conditions would need to hold, neither of which are likely:
- (a) Condition 1: News Corp would need to be able and have an incentive to actually exert control over the Sky News agenda; and
 - (b) Condition 2: any control exercised by News Corp over Sky News' agenda would need to lead in a significant change in the wider news agenda.
- 5.3 As explained in the report by Perspective Consulting at Annex II, neither of these conditions would be satisfied, since it is not the case that News Corp could "control the agenda" - within Sky News or more widely - as a result of the Transaction.
- 5.4 Plurality has increased since the Communications Act was enacted and there is every reason to believe that it will continue to increase with or without the Transaction. This situation raises the bar for intervention on grounds that the Transaction will lead to insufficient plurality.

No change in the Sky News agenda

- 5.5 Section 4 explained that News Corp does not currently exercise influence over Sky News' editorial agenda (despite the degree of control it already has over Sky). This would not be changed by the Transaction.
- 5.6 In addition to the reasons set out in paragraphs 5.1 to 5.5 above, there are a number of features of the provision and consumption of TV news which safeguard the independence of the Sky News agenda from shareholder influence:
- (a) Audiences have very particular expectations of TV news, which is a powerful force for similarity between outlets.
 - (b) Much of the TV news agenda is driven by events of the day and access to shared news gathering resources.
 - (c) Impartiality requirements in the regulatory framework, as mentioned in section 4, are important constraints, since they influence story choice as well as how stories are treated.
 - (d) For areas where plurality is most important (for instance, election coverage), it is inconceivable that a broadcaster would choose not to provide coverage of a key story of the day, and once covering a story, impartiality rules apply.
 - (e) TV news rooms have their own particular ethos, and imposing a newspaper approach will be difficult (and past transfers of senior newspaper staff to Sky have generally been unsuccessful).

No change in the wider news agenda

³⁴ DTI Guidance, paragraph 7.7.

- 5.7 Even if there were to be a change in Sky News' agenda following the Transaction, this would be highly unlikely to lead to a situation where News Corp could have a significant influence on the wider news agenda leading to insufficiency of plurality for any relevant audience.
- (a) There are numerous fierce competitors of News Corp and Sky. The BBC, in particular, is a powerful independent voice; with secure funding, a substantial audience lead in each of TV, radio and online news; and a very high reputation with consumers. It is most unlikely to become a follower of a News Corp/ Sky News agenda.
 - (b) Perspective estimates that Sky News currently has a 6.3% share of TV news consumption, suggesting a limited ability to influence third parties.³⁵
 - (c) News Corp/ Sky News outlets do not represent a particularly important source of stories for other outlets. As set out in the Perspective Report at Annex II, analysis of news sources quoted by news providers demonstrates that newspapers are by no means the sole source of the stories they represent. Looking specifically at UK sources, an analysis of sources cited by Reuters demonstrates the importance of the BBC as the leading source.³⁶
 - (d) Consumers are increasingly consuming news from specialist and international outlets that are all the less likely to be influenced by a change in news agenda at one generalist, UK outlet.
 - (e) The internet in particular has led to far more diverse consumption.³⁷ Online consumers benefit from news from news sources unavailable to them offline. Such consumers consume from a wider range of sources, exposing them to a far wider range of views. Moreover, the active mode of consumption online (for example, involving searching for a particular topic) makes users far less subject to the agenda choices of one or more traditional news outlets.

Increased and increasing plurality

- 5.8 There has been a dramatic increase in plurality since the Communications Act was enacted.
- (a) There has been an increase in the range of choice of TV news, and due to the rise of digital TV, many more households have access to that wider range.
 - (b) The internet has had a transformative effect. Many more people are online, and the news consumption of those online is up significantly compared to 2003. Moreover, online consumers are using a range of news sources dramatically greater than that used by a typical news consumer in 2003.
 - (c) While TV remains the most important source of news for consumers, it is predicted that the internet will shortly overtake newspapers.
- 5.9 While there are a variety of possible scenarios for the development of the UK media market in the future³⁸, there is consensus amongst commentators on a number of points:
- (a) Convergence will continue, with what were once entirely distinct media sectors (TV, radio, newspapers and so on) increasingly being consumed via a single

³⁵ See, further, Perspective Report, Figure 8.

³⁶ See, further, Perspective Report, Figure 4.

³⁷ See, further, paragraph 6.6(c) below.

³⁸ See, further, Perspective Report, section 6.

platform, the internet. As high speed broadband rolls out, the migration of TV online will accelerate. This will bring increased competitive intensity and plurality.

- (b) Consumers will be ever more active both in customising their own personal agenda (via news search, alerts and so on) and in influencing the wider news agenda (via Twitter, YouTube, blogs and so on). This marks a shift from less plural media to more plural media (since most consumers only take one newspaper, if any), and a shift away from areas where News Corp and Sky are stronger to areas where they are relatively weak.
- (c) We are at the beginning of a surge of consumption via mobile devices, which will bring the dynamics of plural, on-line consumption to areas (particularly out-of-home) that were previously the domain of paper based formats.

5.10 One consequence of these developments, as noted by Perspective³⁹ is that there will be a range of evolving approaches to news capture and production.

- (a) If newspaper organisations move into television, the very different editorial and technical demands of broadcast news, coupled with highly specific regulatory requirements, are likely to mean that TV and print newsrooms remain separate for the foreseeable future.
- (b) Where broadcasters move into new media, they will tend to place a central focus on high quality audio and video news, with text and graphics in a support role. For these ventures, the culture of the TV newsroom is likely to remain central, with audiovisual content tailored to meet the high technical and editorial specifications demanded by broadcasting use.

Conclusion

5.11 News Corp already has a degree of control over Sky. This does not translate into editorial influence over Sky News. Post-Transaction, News Corp would not have any materially increased influence over the Sky News editorial agenda than it does today. The Perspective Report shows that there is a range of constraints that will continue to make it impractical and unlikely for News Corp to influence Sky News' editorial agenda and the wider news agenda. Ultimately, a wide range of approaches will evolve to news capture and production in the future post-Transaction; and those which appeal best to consumers will be most successful.

³⁹ See, further, Perspective Report, pages 42 - 43.

6. SUFFICIENT PLURALITY POST-TRANSACTION

Overview

- 6.1 As mentioned in section 3, the only audience for which the combination of a broadcaster and a newspaper publisher could conceivably reduce plurality is a cross-media audience. Even if Ofcom assumes that there will be a "head count" reduction in the number of voices for a cross-media audience, it must go on to consider whether that reduction will result in insufficient plurality for any relevant audience.
- 6.2 In order to carry out the analysis, Ofcom must consider: (i) how to measure the variety of voices available to each audience; and (ii) what the Transaction changes (if anything).
- 6.3 The CC analysed the sufficiency of plurality for television audiences and cross-media audiences in 2007 and had no concerns in relation to the Sky/ ITV case which focused not only a cross-media audience but also a single medium TV audience. Since 2007, the UK media landscape has evolved in ways which signal ever increasing plurality in news provision.
- 6.4 Therefore, the only reasonable conclusion is that the Transaction does not lead to insufficient plurality for any audience in the UK. We also considered, following the Sky/ ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International. This grouping was found to be of a minimal size (0.3% of the UK population).⁴⁰

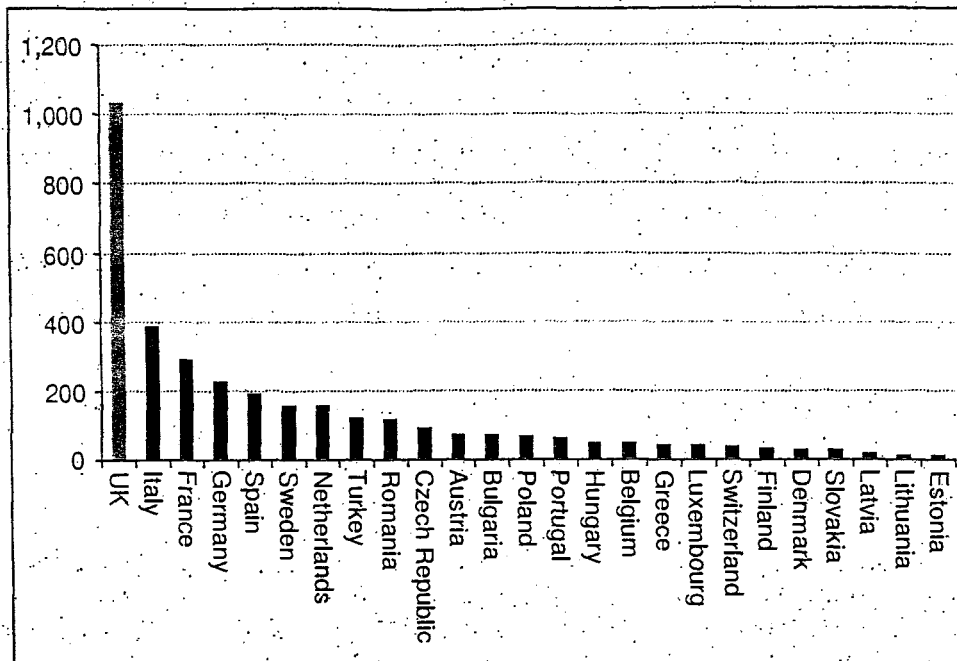
Media landscape

- 6.5 As it is shown in the FTI Report attached at Annex I, the level of plurality in the provision of news to UK audiences across different media platforms is increasing, in terms of both the number of voices and the range of voices. Considering the media landscape generally:
- (a) There is increased penetration of digital television meaning a greater proportion of the population has access to a wider variety of channels. Consumer survey results for the second quarter of 2010 show that take-up of digital television in UK households stood at 92.7%, up by 2.9 percentage points year on year,⁴¹ one of the highest in Europe.
 - (b) The number of TV channels available in the UK significantly exceed any other country, as shown in Figure 1 below.

⁴⁰ FTI Report, paragraphs 6.24 - 6.44.

⁴¹ Ofcom Digital Television Update - 2010 Q2.

Figure 1: Number of channels by country



Source: European Audiovisual Observatory/ MAVISE

Note: Includes regional variations; not on a consistent basis with Ofcom's figures

- (c) An increasing percentage of the UK population (currently standing at around 71%) have home broadband access.⁴²

News provision

6.6 Looking specifically at the implications for news *provision*, these changes increase the availability of a wide range of voices:

- (a) There is a significant increase in availability of TV news options to the UK audience over and above the traditional PSBs. The BBC maintains a significant lead in market share (31.4% of multichannel homes) and a wide variety of different dedicated digital news channels are now accessible to many UK consumers.⁴³ Furthermore, the BBC commands in aggregate around 75% of TV news consumption as shown in Figure 2 below.
- (b) The number of voices in newspapers and magazines has not materially increased but nor has it materially decreased. However the circulation of printed media is steadily declining and so is the importance of this medium on a cross-media basis as a source of news for UK consumers.
- (c) On the other hand, the internet has had a transformative effect on news plurality as a means of accessing multiple news sources.
- (i) There has been an explosion in the number of online news sources. comScore tracks 675 news websites in the UK of which more than 120 have over 100,000 UK visitors.⁴⁴

⁴² Ofcom Communications Market Reports.

⁴³ See, further, FTI Report, Figure 4.2.

⁴⁴ See, further, FTI Report, Figure 4.8.

- (ii) The internet is a converging medium, with offline news sources also tending to be the most important online news sources.⁴⁵ These trends are analysed in detail in sections 4 and 5 of the FTI Report. The internet also increased plurality in news reporting adding to conventional/offline news sources/providers. For example, news provision over the internet is characterised by news aggregators in addition to traditional news providers. News aggregators play a key role in online news provision. As the World Association of Newspapers has observed:

*"Today, the advent of internet and mobile news has only exacerbated the prominence of news agencies and has possibly caused more problems for newspapers. Instead of having to distribute their content through newspapers or television stations, news agencies can directly contact the consumer through new media."*⁴⁶

Aggregators present a vast range of sources to their audience, including many they would otherwise likely never come across. In the year to August 2010, UK visits to Google News were up 30%.⁴⁷ In the year to October 2010, 1,738 different sources⁴⁸ have appeared on the Google News homepage (and additional sources have appeared on individual story pages). Also, as a result of the creation of blogs, political website and user generated-content root stories are generated by a great variety of sources. The Perspective Report analyses a number of instances that show the importance of this phenomenon in terms of plurality.⁴⁹

News consumption

- 6.7 These developments in news provision are accentuated if looked at in the context of the trends in news consumption:
- (a) Crucially, it is becoming easier and easier for UK consumers to access multiple sources of news. Most UK consumers use 3-4 different media platforms for news and follow 4-5 news sources daily.⁵⁰
 - (b) As stated in the FTI Report, research shows that TV is the most popular medium for accessing news and BBC and ITV remain the most watched channels.⁵¹ Sky News, by contrast, accounts for approximately 6% of TV news consumption as shown in **Figure 2** below.

Figure 2: Share of TV news consumption; 2010 year to date

⁴⁵ See, further, paragraphs 5.7(e) and 5.8(b) above.

⁴⁶ World Association of Newspapers, 2006.

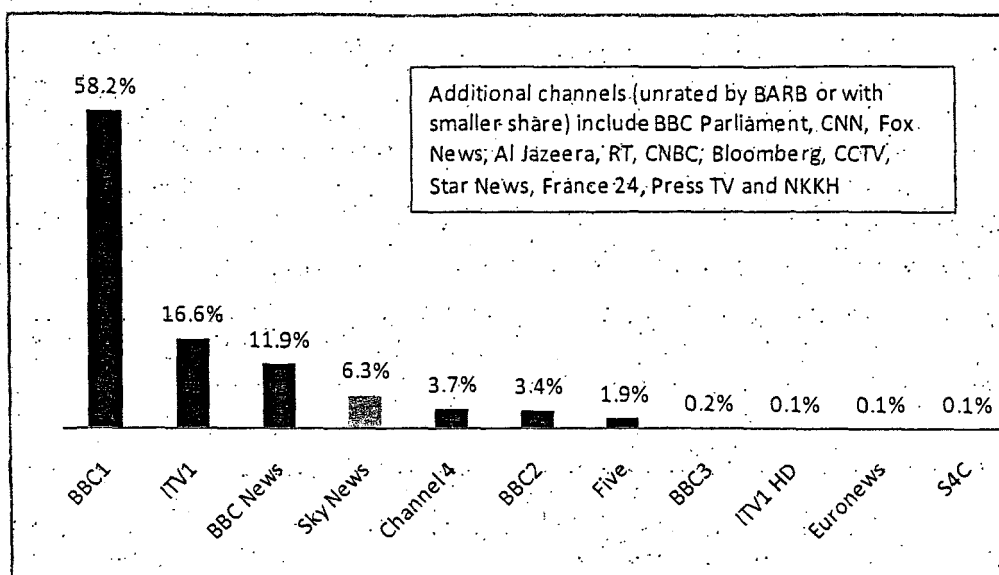
⁴⁷ Nielsen Online/TRP.

⁴⁸ Newsknife (subscription required) http://www.newsknife.com/members/front_relevant_news01.html

⁴⁹ See, further, Perspective Report, pages 16 - 22.

⁵⁰ See, further, FTI Report, paragraph 5.54.

⁵¹ See, further, FTI Report, paragraphs 5.51 - 5.53.



Source: BARB, Perspective Associates analysis.

Notes: Channels include viewing of their +1 where appropriate
Volume of Viewing calculated based on DurMin and 000s

- (c) As noted above, circulation in printed media is in long term decline and so is its importance as a source of news for consumers. The circulation of paid-for newspapers declined by 3.5% between 2003 and 2010.⁵²
- (d) The proportion of population accessing radio is up, while total time spent listening is down. BBC radio listening has remained more constant.
- (e) The internet is currently, according a recent Mintel report, the second most important source of news with around 46% of UK population using it regularly.⁵³
- (f) Time spent watching TV news and consuming news on the internet are about the around same.⁵⁴

6.8 Online news consumers have a tendency to be much more promiscuous in terms of their content consumption than those who rely primarily on more traditional media. The average of outlets used on the internet is about 3.5, much higher than TV and newspapers.⁵⁵ The internet makes it much easier to immediately access multiple views on a topic of interest, without having to wait for specific broadcast times, or purchase multiple copies of print newspapers (for example). Therefore, as the internet becomes an increasingly important source of news, it is to be expected that an increasing proportion of the population to be regularly exposed to a wide variety of "voices".

6.9 Against this background, there is a high degree of variety and range of voices available to a cross media audience which comfortably meets the criteria of sufficiency of plurality.

Sufficient plurality post-Transaction

6.10 This Transaction does nothing to alter this conclusion. In particular:

⁵² See, further, FTI Report, Figure 4.8.

⁵³ Mintel, Consumer Perceptions of News Media, September 2010. Internet figure rebased to allow for survey being online.

⁵⁴ Respectively 0.36 and 0.29 hours, Touchpoints.

⁵⁵ See, further, FTI Report, Table 5.1.

- (a) The importance of online as a source of news will continue to grow and so will the plurality of voices that is inherent in this medium.
- (b) As Perspective show, time spent on online news sites has grown by 214% since 2007, with 1,710 individual news and information sites tracked by comScore in the UK (excluding news content on social networks, blogs and emails) in July 2010.⁵⁶ Set against this growing and increasingly fragmented online landscape, Sky and News Corp will continue to have a diminutive share of voice.
- (c) The number of TV news voices remains unaltered as a result of this Transaction and will continue to be led by BBC and ITV, with a wide range of additional broadcast news voices accessible to most UK consumers.
- (d) The number of radio news voices is entirely unaffected, with again the BBC as the leading player.
- (e) The number of newspaper enterprises is not affected by the Transaction and, in any event, the relative importance of print newspapers as a source of news for UK audiences is in long term decline.

6.11 Furthermore, as set out in more detail in the FTI Report⁵⁷ FTI considered, following the Sky/ ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International:

- (a) only 6% of UK adults actively watch Sky News or visit SkyNews.com and actively read News International newspapers or actively visit News International websites (the "Sky/ NI Overlap Group");
- (b) approximately 96% of the Sky/ NI Overlap Group rely on other news sources, in addition to Sky and News International sources;
- (c) only 0.3% of the Sky/ NI Overlap Group rely on only Sky and News International news sources.

6.12 These results are similar in magnitude to the findings of the CC in the Sky/ ITV case. The CC concluded that no more than 1 per cent of the UK population, and quite possibly less than this, received news from only ITV and/ or News International/ Sky. In the case of the Transaction, FTI found that only 0.3% of the population receive news only from Sky and News International.

6.13 FTI also found that no socio-economic grouping or nation in the UK was disproportionately affected.⁵⁸

6.14 In any event, consumers within the group of consumers currently relying primarily on Sky News and News International could easily switch to different news providers or expand their choices for the consumption of news if they chose to do so. The potential availability of sources of news for this audience would be no different from the wide range and number of different voices available to the UK population as a whole.

7. CONCLUSION

7.1 There is no basis to conclude that the Transaction would operate, or be expected to operate, against the public interest by way of any reduction in the plurality of enterprises serving any relevant audience in the UK.

⁵⁶ See, further, Perspective Report, page 27.

⁵⁷ FTI Report, paragraphs 6.24 - 6.44.

⁵⁸ FTI Report, paragraphs 6.19 - 6.23.

7.2 First, Sky News has always been editorially independent, regardless of the degree of control News Corp has enjoyed or exercised over Sky's commercial policy over the years. Secondly, the change to full control will not change this, as editorial independence for UK TV broadcasters is deeply rooted in the regulatory and cultural grain of the industry. Thirdly, in any event, any effect of the Transaction on cross-media audiences (if any) is likely to be minimal. Fourthly, the strength and number of cross-media voices has increased since enactment of the Communications Act and will continue to increase. There is clearly a sufficient plurality of voices available to cross-media audiences following the Transaction.

Hogan Lovells International LLP

Allen & Overy LLP

23 November 2010

-25-

Annex I

Measuring plurality in news

A report by FTI Consulting

Annex II

Past and future trends in plurality and the setting of the news agenda

A report by Perspective Consulting

Annex III

Glossary

The following main definitions are used in this submission:

BIS	Department for Business, Innovation and Skills
Broadcasting Code	Ofcom Broadcasting Code, the most recent version of which took effect on 1 September 2010
CAT	Competition Appeal Tribunal
CAT Judgment	<i>British Sky Broadcasting v Competition Commission and Secretary of State and Virgin Media Inc v Competition Commission and Secretary of State</i> ([2008] CAT 25), 29 September 2008.
CC	Competition Commission
CC Report	Acquisition by British Sky Broadcasting Group Plc of 17.9% of the shares in ITV Plc, Report sent to Secretary of State (BERR), 14 December 2007
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CoA	Court of Appeal
CoA Judgment	<i>BSkyB v Competition Commission</i> [2010] EWCA Civ 2 – Case Nos C12008/3053 and 3066
Commission	European Commission
Communications Act	Communications Act 2003
COO	Chief Operating Officer
DTH	Digital direct-to-home
DTI	Department of Trade and Industry
DTI Guidance	DTI "Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers", May 2004
DTT	Digital terrestrial television
Enterprise Act	Enterprise Act 2002
EPG	Electronic programming guide
EUMR	EU Merger Regulation (Council Regulation (EC) No. 139/2004)
European Intervention Notice	An intervention notice pursuant to section 67, Enterprise Act
Explanatory Notes	Explanatory notes to the Communications Act
FTA	Free-to-air
FTI Report	The report prepared by FTI Consulting at Annex I to this submission
IPTV	Internet Protocol television
News Corp	News Corporation
Ofcom	Office of Communications
Ofcom Report	Ofcom Report for the Secretary of State pursuant to Section 44A of the Enterprise Act 2002 of British Sky Broadcasting plc's acquisition of a 17.9% shareholding in ITV plc, 27 April 2007
OFT	Office of Fair Trading
OFT Report	Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc, OFT Report to the Secretary of State for Trade and Industry", 27 April 2007
Perspective Report	The report prepared by Perspective Consulting at Annex II to this submission
PSB	Public Service Broadcaster

Secretary of State
Sky
Sky/ NI Overlap Group

Secretary of State for Business, Innovation and Skills
British Sky Broadcasting Group plc
UK adults who actively watch Sky News or visit SkyNews.com
and actively read News International newspapers or actively visit
News International websites

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 News Corporation

SUBMISSION TO THE SECRETARY OF STATE
FOR CULTURE, OLYMPICS, MEDIA AND SPORT

INTRODUCTION/CONTENTS

[Redacted]

From: Michel, Frederic <[Redacted]>
Sent: 24 January 2011 18:36
To: [Redacted]
Cc: SMITH, Adam
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Attachments: non-conf version of DCMS submission of 14 January 2011.pdf

[Redacted]

Here is the redacted version of our submission - CD-rom is on its way -

You should use this one rather than the one sent by email earlier today - the other submissions will be on the CD-rom

warm regards

Fred

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[Redacted]

From: Michel, Frederic [Redacted]
Sent: 24 January 2011 18:41
To: [Redacted] Michel, Frederic
Cc: SMITH, Adam
Subject: RE: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions



Thanks a lot. appreciated

From: [Redacted] Culture.gsi.gov.uk]
Sent: 24 January 2011 18:41
To: Michel, Frederic
Cc: SMITH, Adam
Subject: RE: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions

Fred,
Many thanks. I will call later on your mobile to confirm that everything is definitely going ahead as planned.

[Redacted]

From: Michel, Frederic [mailto:[Redacted]]
Sent: 24 January 2011 18:36
To: [Redacted]
Cc: SMITH, Adam
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions

[Redacted]

Here is the redacted version of our submission - CD-rom is on its way -
You should use this one rather than the one sent by email earlier today - the other submissions will be on the CD-rom

Yours regards
Fred

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[Redacted]

From: Michel, Frederic [Redacted]
Sent: 25 January 2011 08:58
To: SMITH, Adam; ZEFF JON
Cc: [Redacted]
Subject: News Corporation's response
Attachments: Response to statement by Secretary of State 250111 FINAL (2).pdf

Please see attached.

Best

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

[Redacted]
mo

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News Corporation

NEWS RELEASE

For Immediate Release

Contact: Alice Macandrew:
Miranda Higham:

Response to statement by Secretary of State for Culture, Olympics, Media and Sport

London, 25 January, 2011 – News Corporation continues to believe that its proposed acquisition of the shares in BSkyB it does not own will not lead to there being insufficient plurality in news provision in the UK. The company has put forward extensive and detailed evidence that the level of plurality in the UK has increased since 2003 (when the Communications Act was enacted) – and since the ITV plurality review in 2007 when no concerns were found about the sufficiency of plurality.

News Corporation believes that Ofcom's analysis is deficient in a number of ways. While Ofcom acknowledges that the combination of News Corporation and BSkyB would have a minimal impact on consumers and would not enhance News Corporation's ability to influence the news agenda, it nevertheless concludes that the transaction may be expected to operate against the public interest.

News Corporation has made a submission to the Department of Culture, Media and Sport setting out a number of issues with the Ofcom report. However, in the interests of progressing to a transaction, News Corporation has submitted an undertaking that we believe addresses Ofcom's concerns. We will continue to engage constructively with the regulatory process.

Notes to Editors:

On 21 December 2010, the European Commission cleared News Corporation's proposed acquisition of BSkyB under EU merger rules. The Commission concluded that the transaction would not impede effective competition in the European Economic Area or any substantial part of it.

News Corporation (NASDAQ: NWS, NWSA; ASX: NWS, NWSLV) had total assets as of September 30, 2010 of approximately US\$56 billion and total annual revenues of approximately US\$33 billion. News Corporation is a diversified global media company with operations in six industry segments: cable network programming; filmed entertainment; television; direct broadcast satellite television; publishing; and other. The activities of News Corporation are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and Latin America.

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 27 January 2011 11:02
To: ZEFF JON
Cc: SMITH, Adam [Redacted]
Subject: Timetable

Dear Jon,

Do you have further details on the next stages? Are we meeting OFT this week?

Warm regards

Fred

Sent from my iPhone

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[Redacted]

From: SECRETARY OF STATE'S OFFICE
Sent: 16 February 2011 18:43
To: 'Michel, Frederic'
Cc: SMITH, Adam
Subject: RE: Confidential: Letter from to James Murdoch to Jeremy Hunt

Frederic

Thank you for your email, I can confirm receipt.

[Redacted]

Department for Culture, Media and Sport

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 16 February 2011 18:31
To: SECRETARY OF STATE'S OFFICE
Cc: SMITH, Adam
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

[Redacted]

Please see attached,
Can you please confirm receipt.
Best

Frederic
Frederic Michel
Director, Public Affairs, Europe
News Corporation

[Redacted]

From: Appella, Andrea [Redacted]
Sent: Wednesday, February 16, 2011 06:18 PM
To: Michel, Frederic
Cc: [Redacted]
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

Please find attached letter from James Murdoch to Jeremy Hunt and an amended set of UIL reflecting the agreed points.

Andrea

Andrea Appella

Deputy General Counsel, Europe & Asia

News Corporation
2 Thomas More Square,
London E98 1XY

Director
Mollie
X
mappella@newscorp.com

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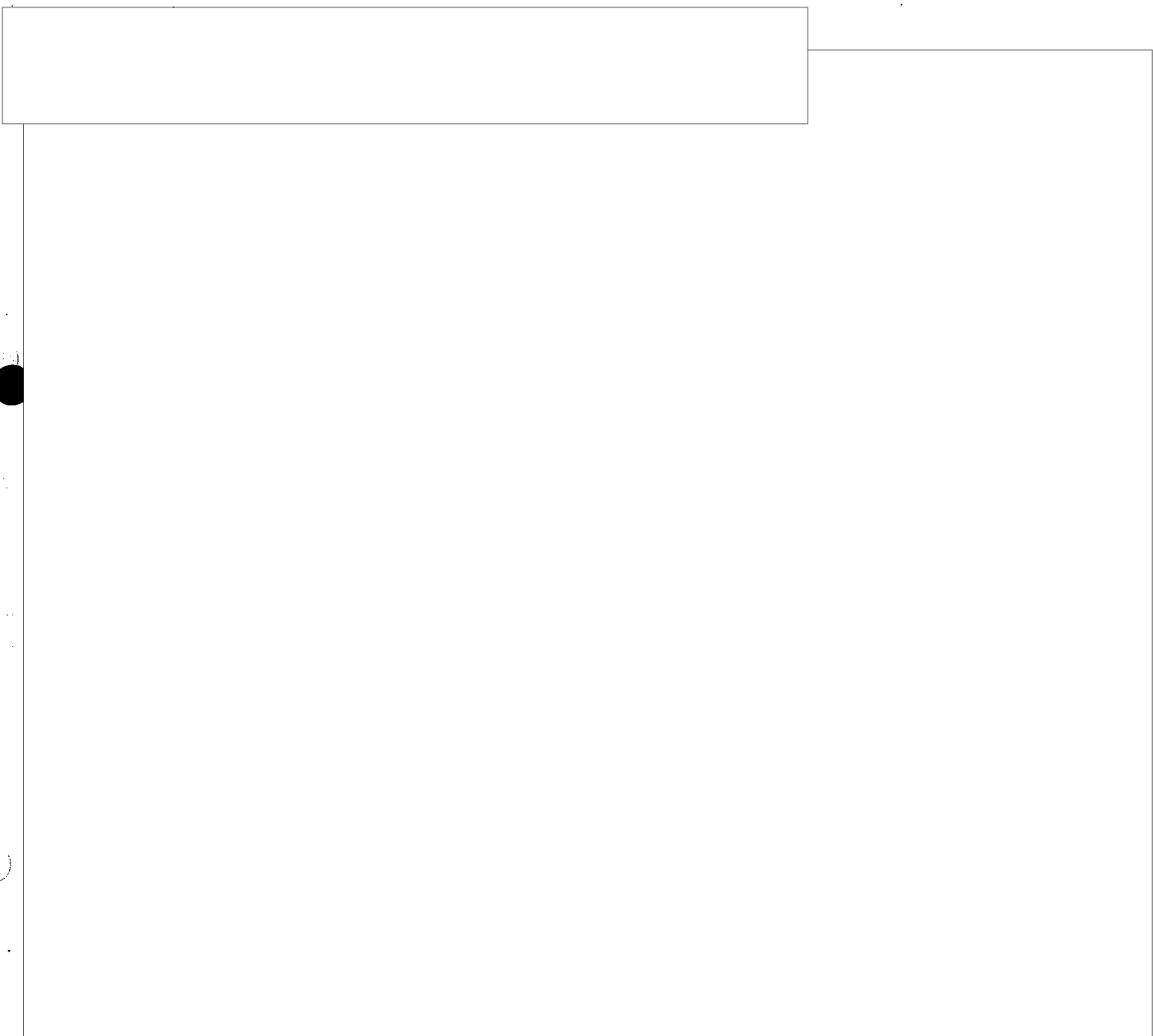
Rt Hon Jeremy Hunt, MP
Secretary of State for Culture, Olympics, Media and Sport

Department for Culture Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

16 February 2011

Dear Jeremy,

News Corp/BSkyB





James Murdoch
Chairman & CEO, Europe & Asia

News Corporation, 3 Thomas More Square, London E9R 1EX



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DRAFT: 16 February 2011

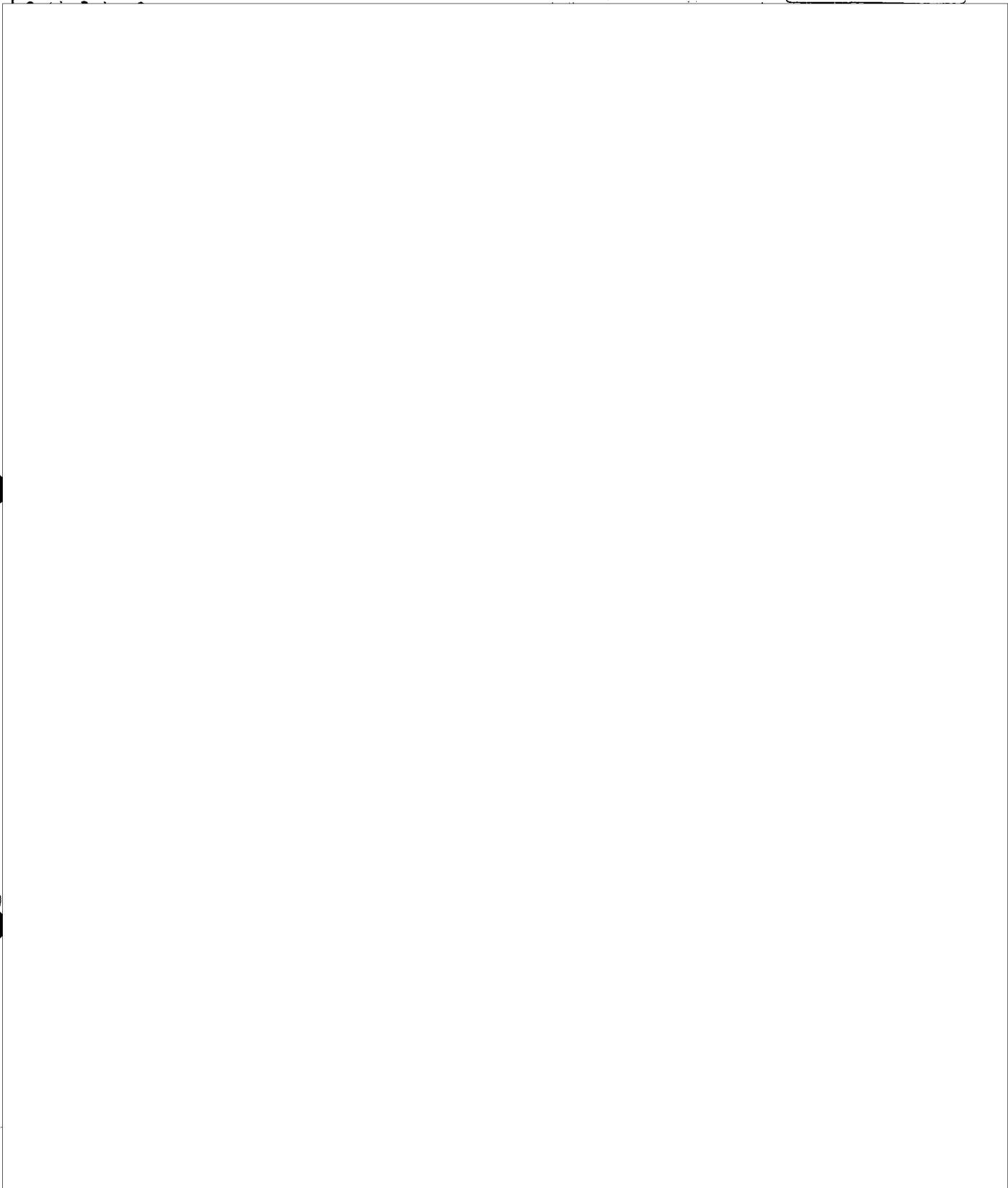
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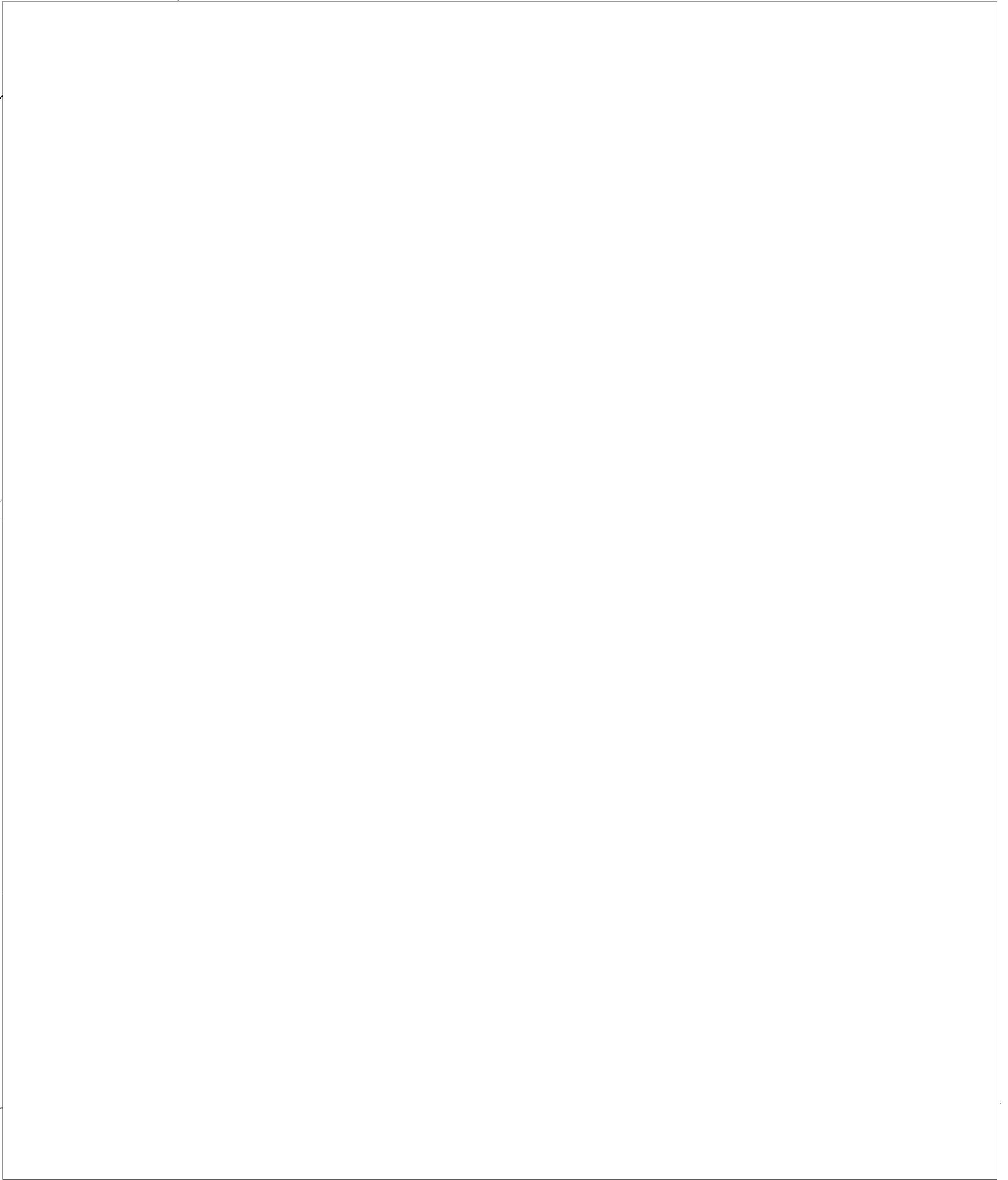
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**PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF BRITISH
SKY BROADCASTING GROUP PLC**

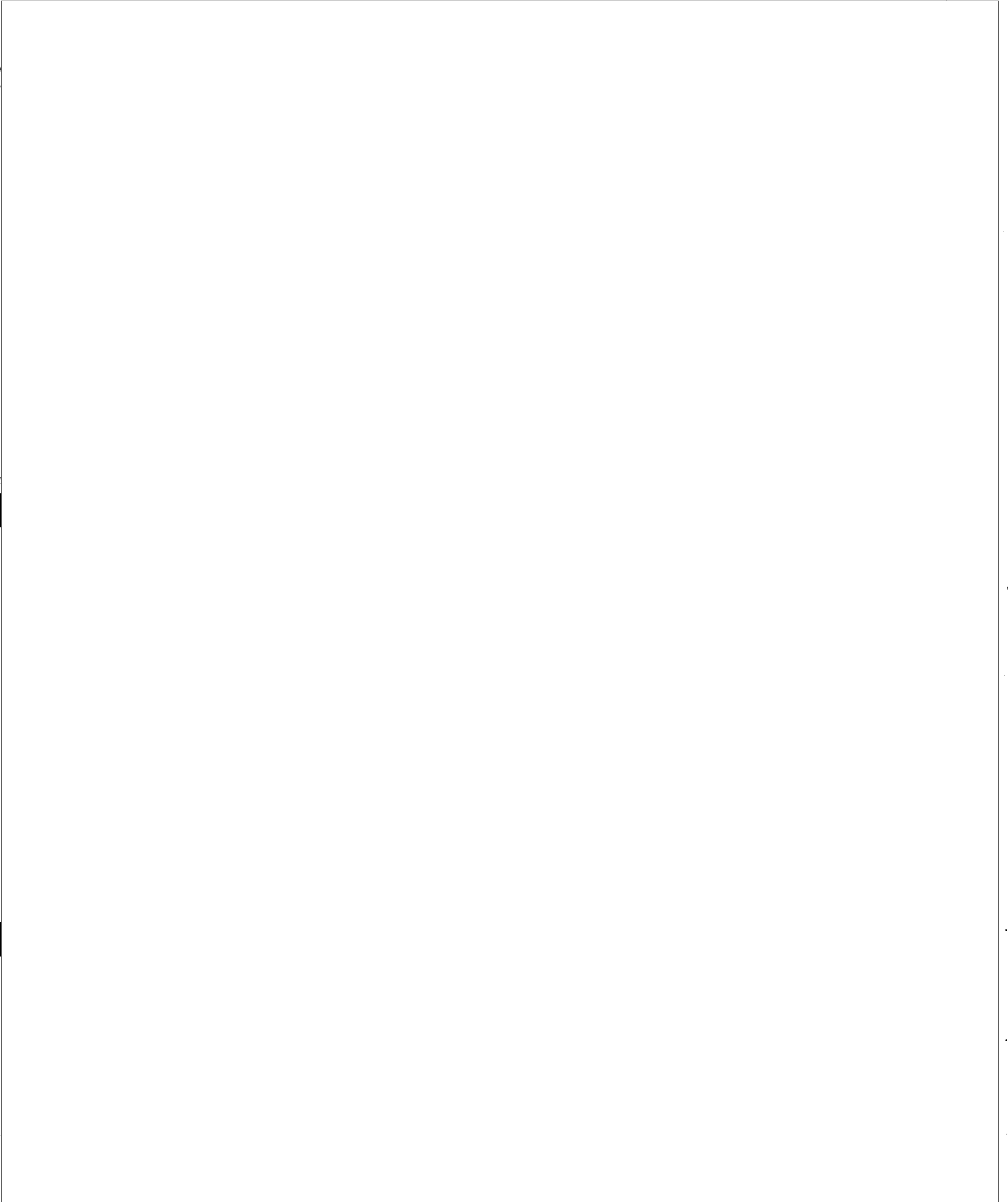
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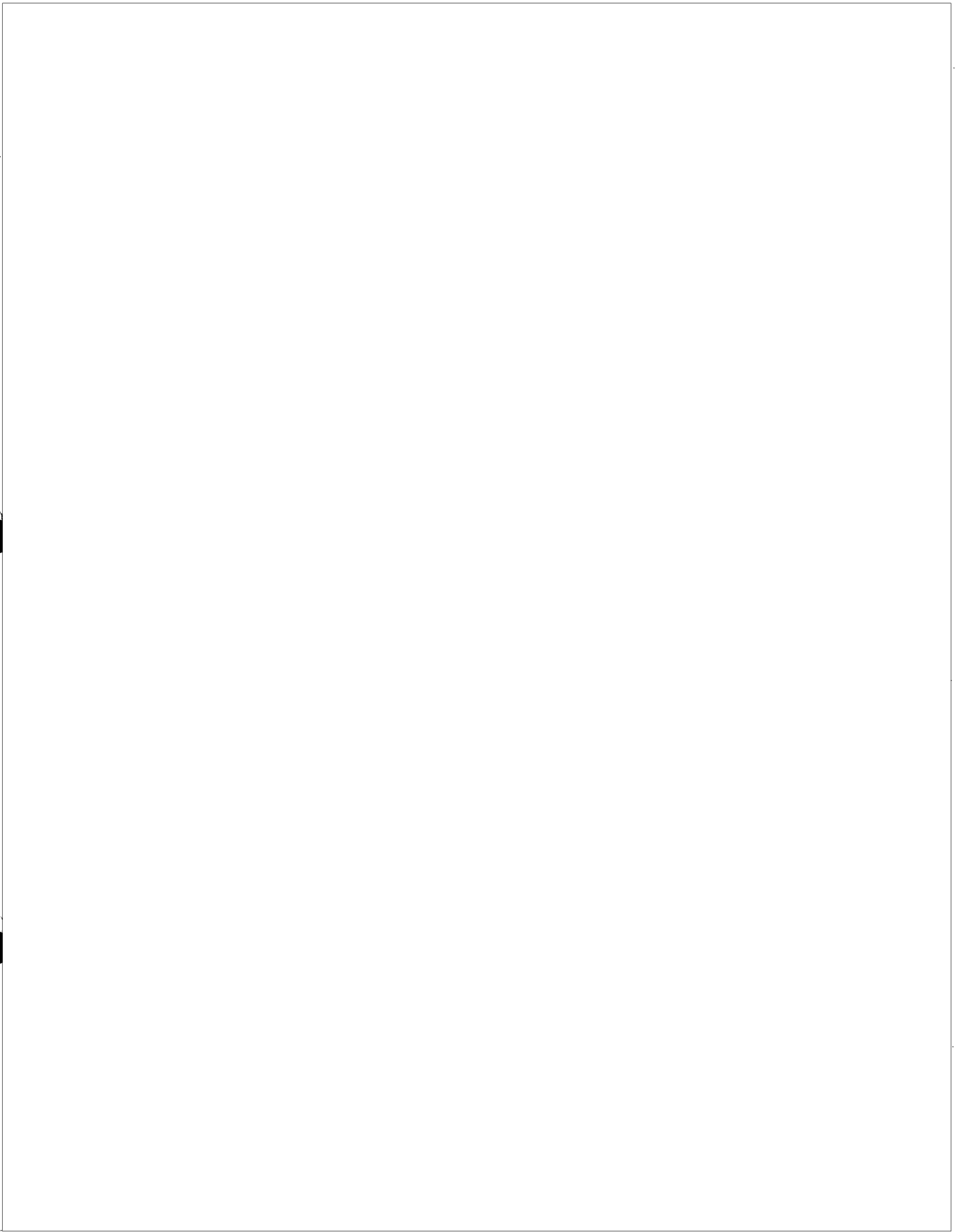


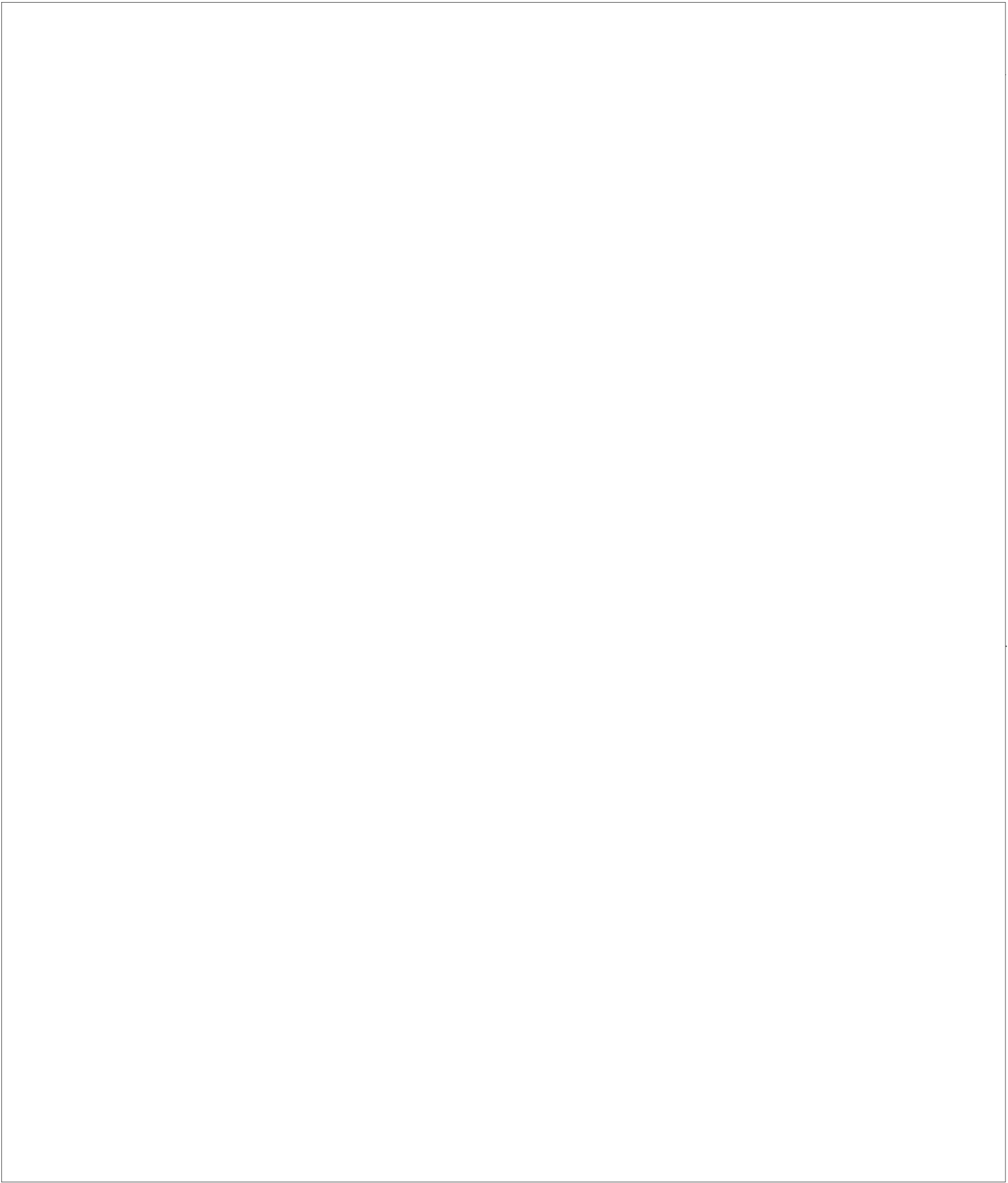




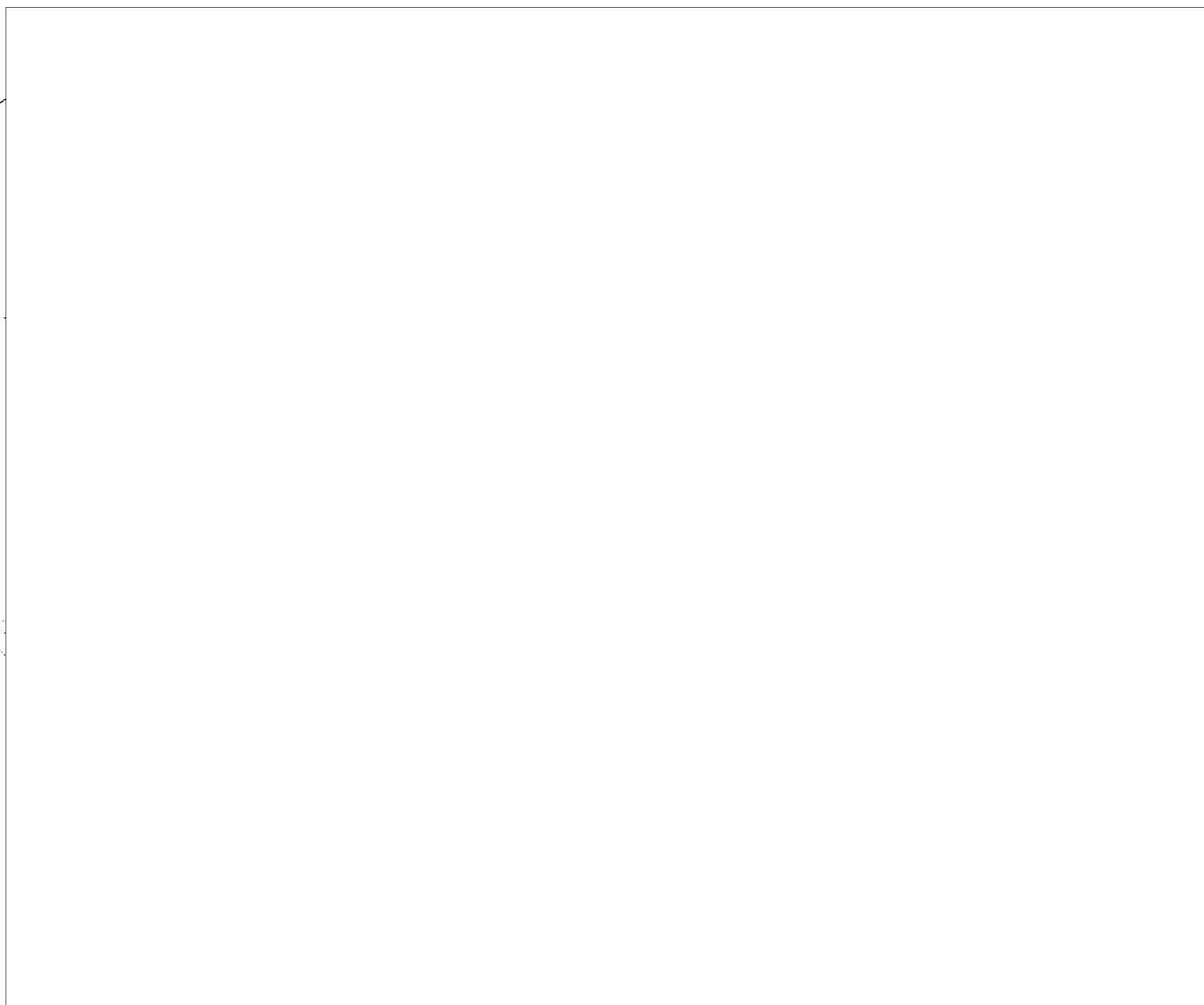












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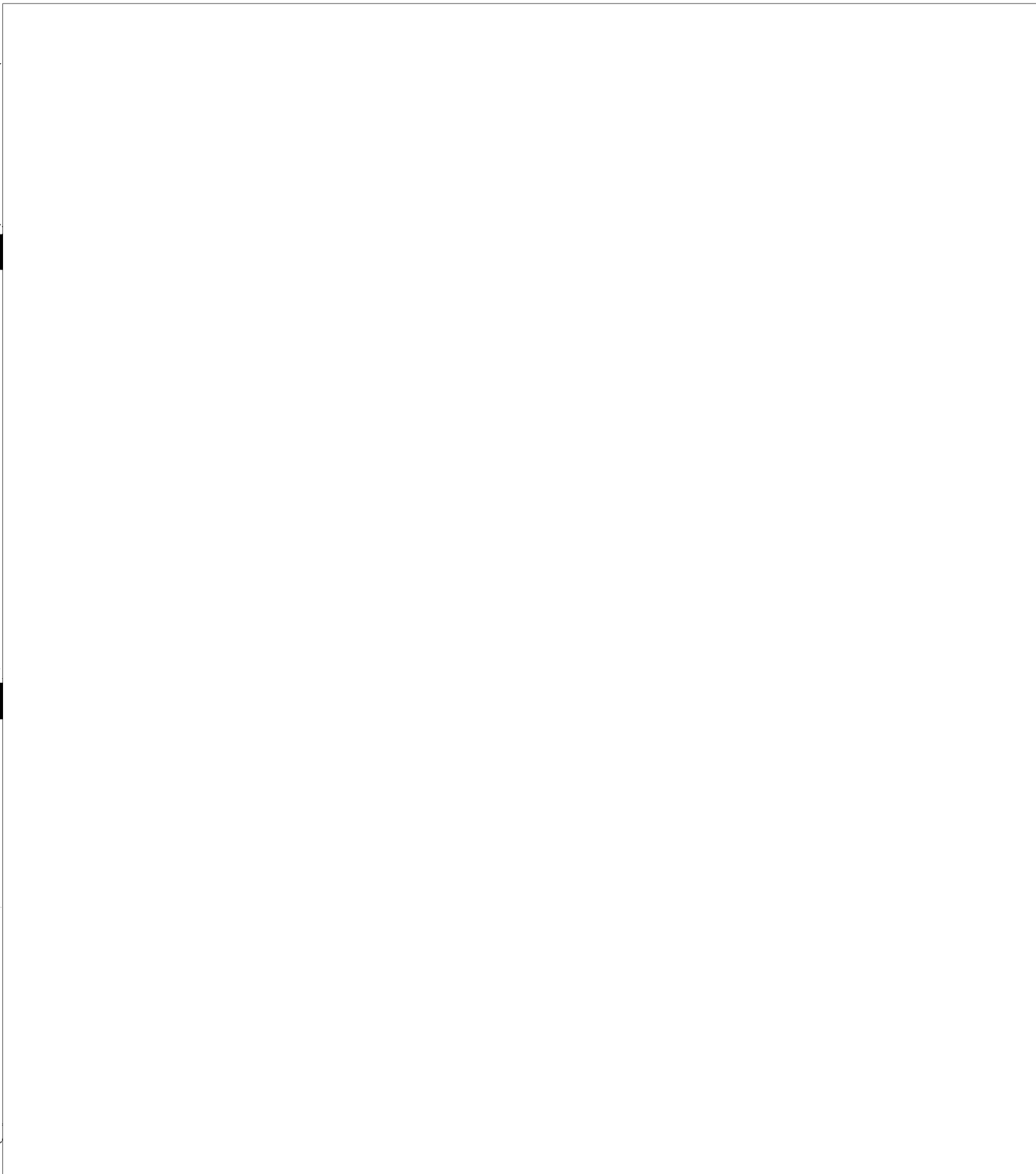
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DRAFT: 16 February 2011

**PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF BRITISH
SKY BROADCASTING GROUP PLC**

UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO PARAGRAPH 3 OF
SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

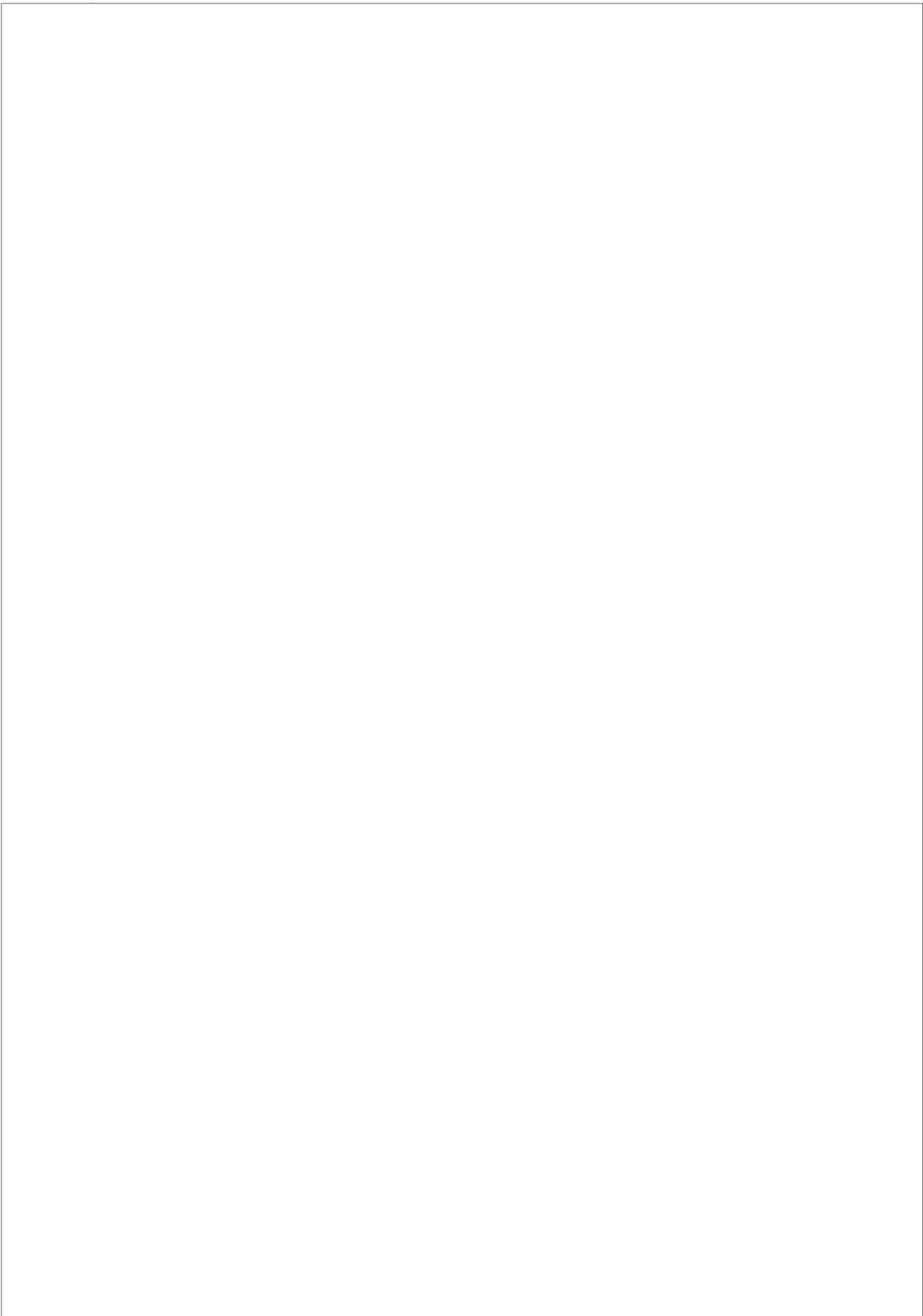


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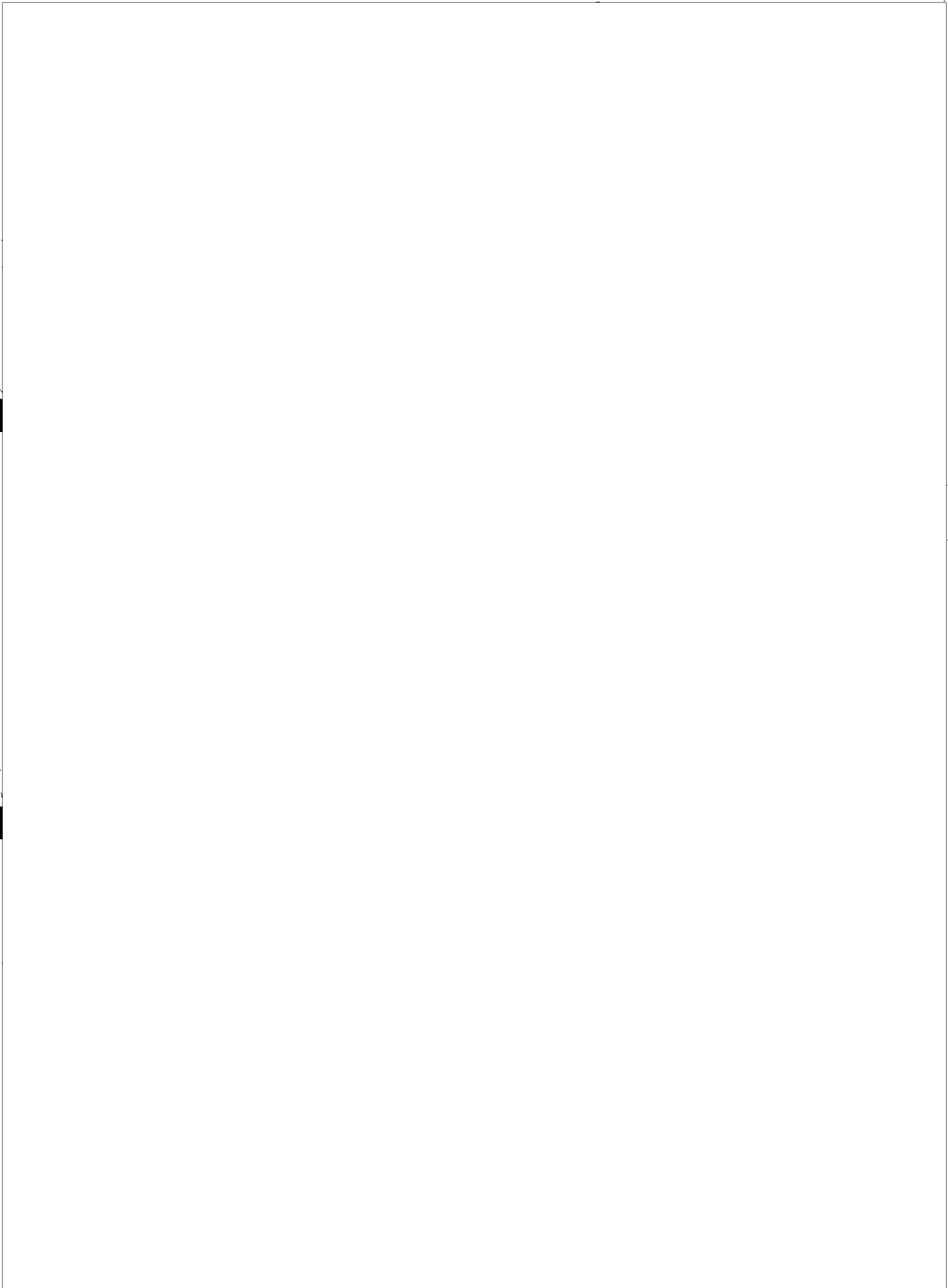
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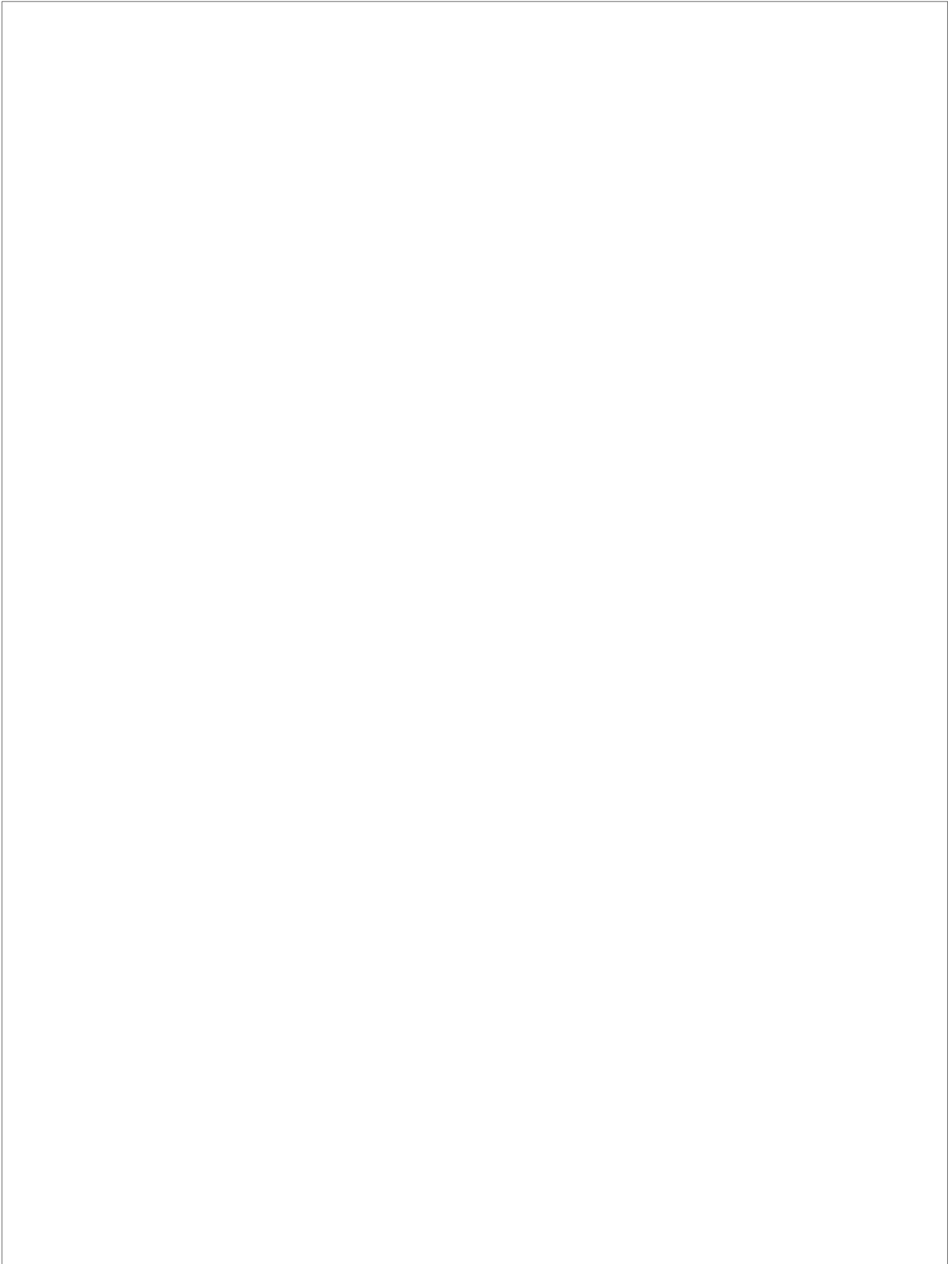
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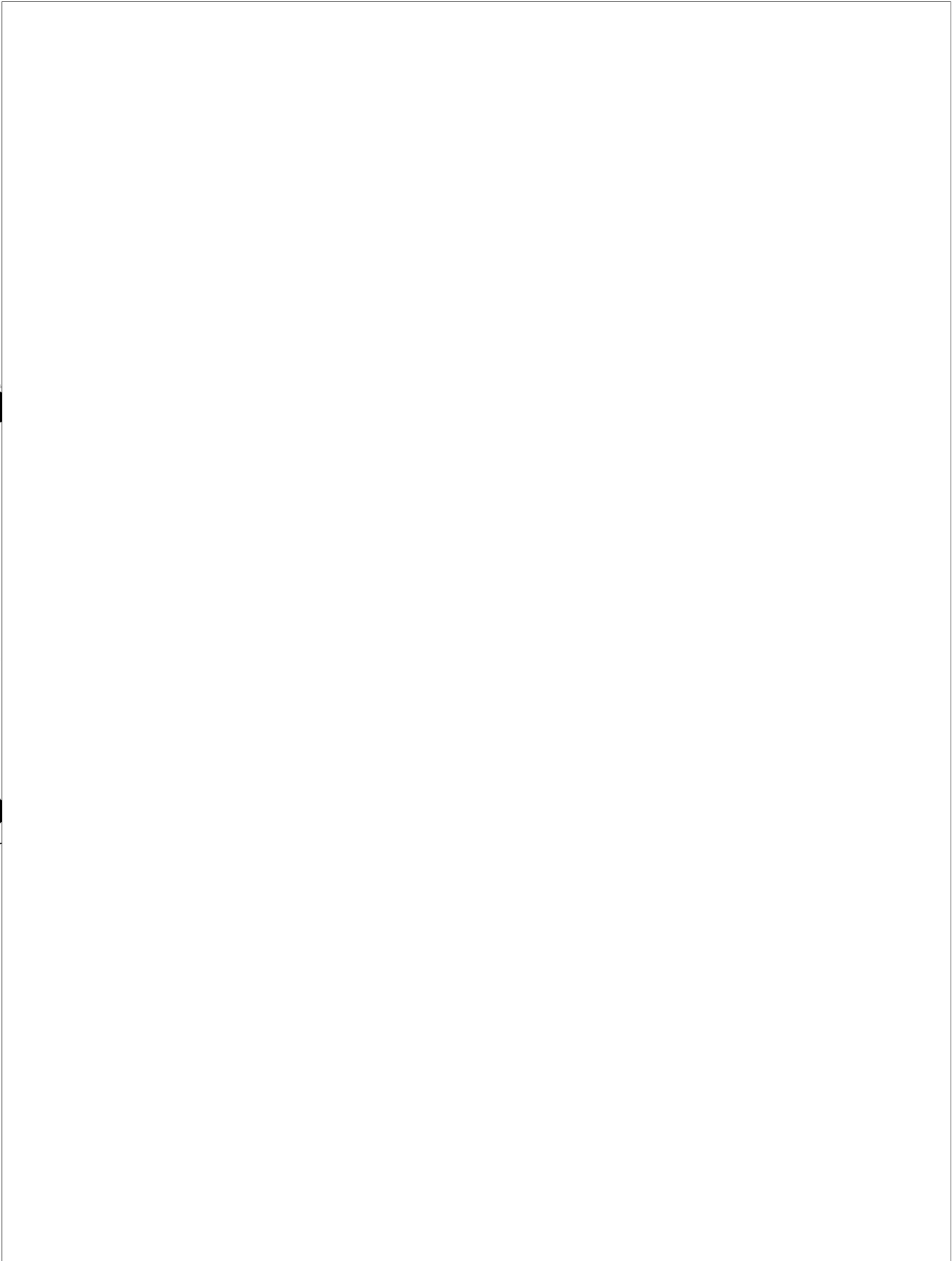
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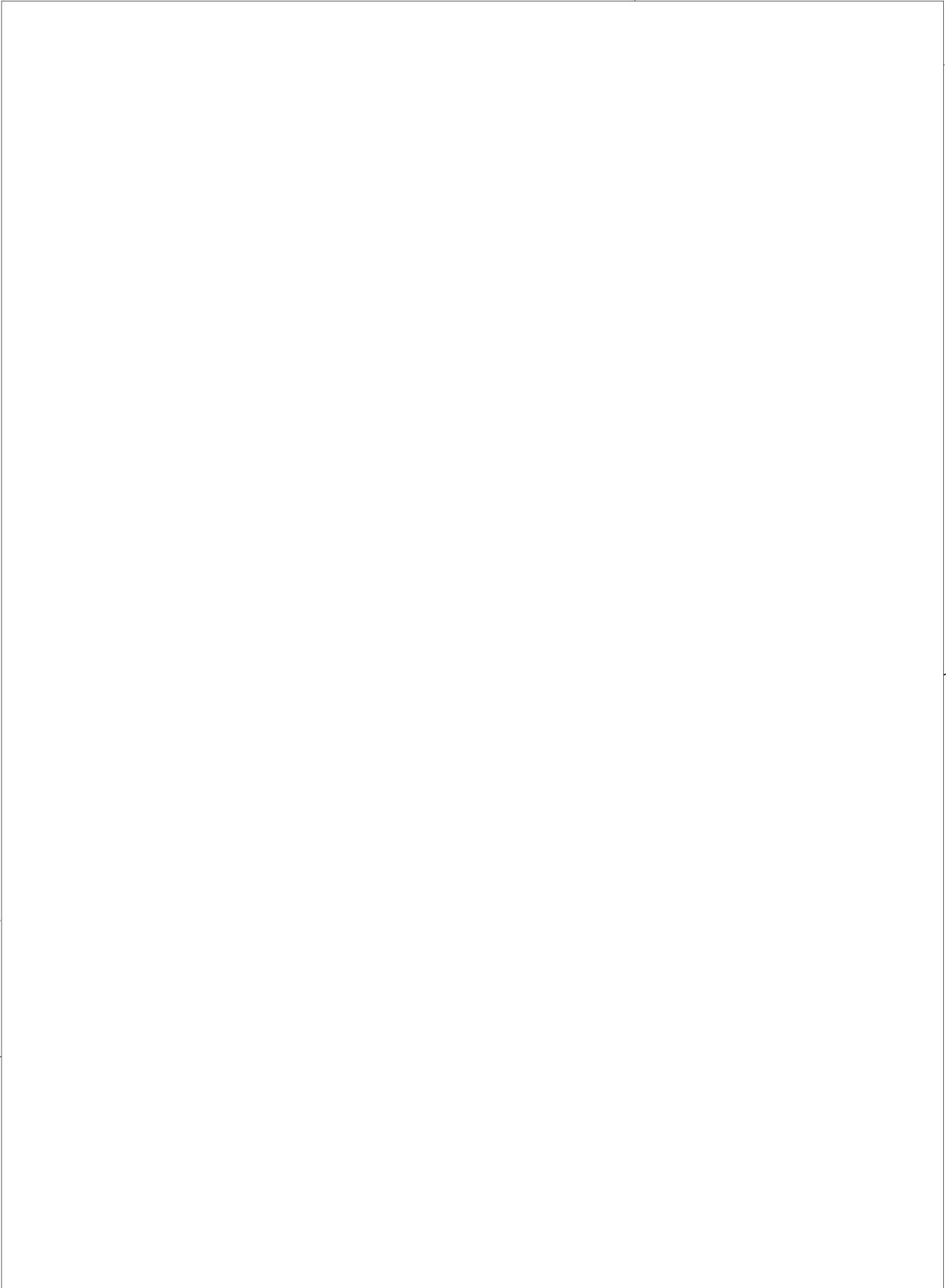
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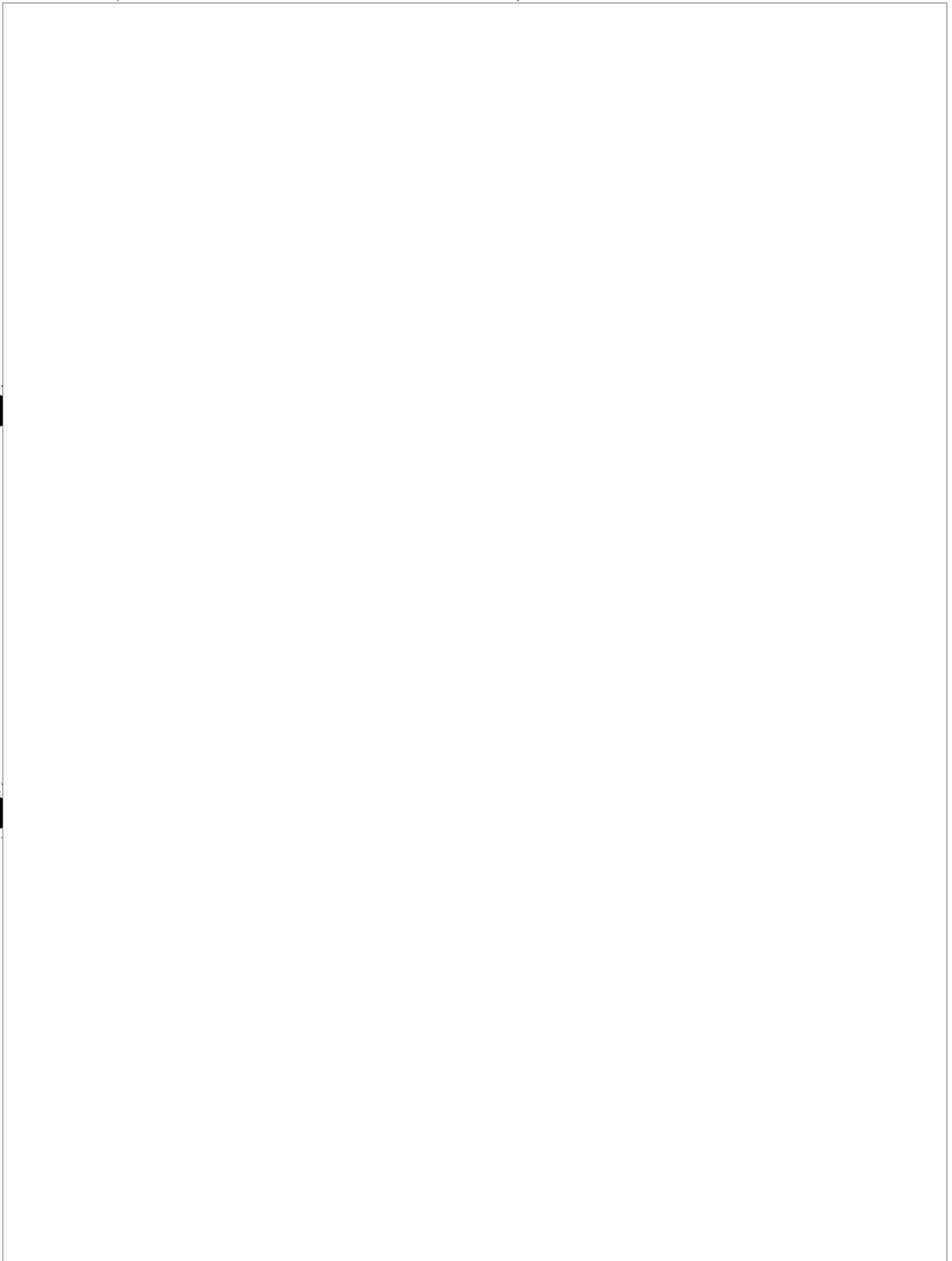
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DRAFT: 16 February 2011





From: Michel, Frederic <
Sent: 13 July 2011 14:35
To: SMITH, Adam; ZEFF JON
Subject: News Corporation Statement regarding BSkyB
Attachments: 130711_NWS Corp Statement re BSkyB FINAL.pdf

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NEWS RELEASE

13 July 2011

NEWS CORPORATION WITHDRAWS PROPOSED OFFER FOR BRITISH SKY BROADCASTING GROUP PLC

News Corporation ("News Corp") announces that it no longer intends to make an offer for the entire issued and to be issued share capital of British Sky Broadcasting Group PLC ("BSkyB") not already owned by it*.

Chase Carey, Deputy Chairman, President and Chief Operating Officer, News Corporation, commented: "We believed that the proposed acquisition of BSkyB by News Corporation would benefit both companies but it has become clear that it is too difficult to progress in this climate. News Corporation remains a committed long-term shareholder in BSkyB. We are proud of the success it has achieved and our contribution to it."

Enquiries:

<p>News Corporation Alice Macandrew Telephone: <input type="text"/></p> <p>Teri Everett Telephone: <input type="text"/></p>	<p>Investors and analysts Reed Nolte Telephone: <input type="text"/></p>
<p>Deutsche Bank Gavin Deane James Agnew Telephone: <input type="text"/></p>	<p>J.P. Morgan Cazenove Harry Hampson Hugo Baring Telephone: <input type="text"/></p>

* For the purposes of Rule 2.8 and other relevant provisions of The City Code on Takeovers and Mergers ("City Code"), News Corp reserves the right to announce an offer or possible offer or make or participate in an offer or possible offer for BSkyB and/or take any other action which would otherwise be restricted under Rule 2.8 of the City Code within the next six months in the event that:

- (i) there is an announcement other than by News Corp or any subsidiary of News Corp of an offer or possible offer for or a merger or possible merger with BSkyB; or
- (ii) BSkyB announces a whitewash proposal for Rule 9 purposes or a reverse takeover not involving News Corp or any subsidiary of News Corp.

In the event that News Corp is permitted pursuant to the City Code to announce an offer or possible offer for BSkyB, News Corp reserves the right to do so at any price and at a price less than 700 pence per BSkyB Share in the event that either: (i) it is recommended by the Board of BSkyB; or (ii) there is an announcement by a third party of an offer or a possible offer for BSkyB at a price lower than 700 pence per BSkyB Share; or (iii) BSkyB declares, makes or pays a dividend which is in excess of its stated dividend policy at the time of this announcement; or (iv) it is so permitted by the City Code.

Any such offer or possible offer by News Corp or any subsidiary of News Corp will be subject to obtaining any required regulatory approval.

A copy of this announcement will be available on News Corp's website at www.newscorp.com.

Deutsche Bank and J.P. Morgan Cazenove are acting as financial advisers to News Corp.

Further information

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