

IN.P 01a

[Redacted]

From: OLDFIELD PAUL on behalf of SECRETARY OF STATE'S OFFICE
Sent: 08 July 2011 15:59
To: [Redacted]
Subject: FW: Letter Ed Richards - John Whittingdale: NewsCorp, Fit and Proper, and Fairness and Privacy
Attachments: J Whittingdale 080711.pdf

The OFCOM letter.

I'm clarifying whether if the police gave any info to OFCOM it would trigger an immediate 'fit and proper judgement' or whether it would launch a 'process' to consider fit and proper. Promised an answer in 5-10 mins.

Paul.

From: [Redacted]
Sent: 08 July 2011 14:47
To: PATEL RITA; [Redacted] SECRETARY OF STATE'S OFFICE; [Redacted]
Cc: [Redacted]
Subject: Letter Ed Richards - John Whittingdale: NewsCorp, Fit and Proper, and Fairness and Privacy

Dear all,

You will no doubt be interested in the attached letter, which we have just sent electronically to John Whittingdale. We will be posting it on our website shortly.

I am happy to discuss

Peter Horne

Principal, Government Business

[Redacted] [@ofcom.org.uk](mailto:[Redacted]@ofcom.org.uk)

Riverside House
2a Southwark Bridge Road
London SE1 9HA

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8 July 2011

ED RICHARDS
Chief Executive

Direct Telephone
Direct Facsimile

John Whittingdale Esq OBE MP
Chairman, Culture, Media and Sport Committee
House of Commons
London SW1A 0AA

Dear John,

Given the interest in Parliament surrounding News International and the proposed NewsCorp-BSkyB deal I wanted to set out as clearly as possible what Ofcom's role, powers and duties are in these matters for Members of your Committee and also interested Members of the House of Commons and House of Lords.

Proposed acquisition by News Corporation of the shares in BSkyB it does not already own

In relation to the proposed acquisition by News Corporation of the shares in BSkyB it does not already own, Ofcom provided its advice to the Secretary of State on the undertakings proposed by News Corporation in lieu of a reference to the Competition Commission on 22 June 2011. The Secretary of State is currently consulting for a further short period. If he asks Ofcom for any further advice, we will of course provide advice in accordance with the terms of any request.

Fit and proper

Separately, Ofcom has a duty under the Broadcasting Acts to continue on an ongoing basis to be satisfied that any person (which will include controlling directors and shareholders) holding a broadcasting licence remains fit and proper to hold those licences.

In considering whether any licensee remains a "fit and proper person" to hold broadcasting licences Ofcom will consider any relevant conduct of those who manage and control such a licence.

It is not for Ofcom to investigate matters which properly lie in the hands of other authorities, such as the police and the criminal or civil courts, and clearly we cannot and should not act whilst allegations are unsubstantiated. It would be unfortunate if action by Ofcom at this moment in time prejudiced any ongoing processes by the proper authorities or failed to take into account relevant information that was subsequently disclosed which may be relevant to a thorough and proper assessment.

However, as you would expect, we are monitoring the situation closely and in particular the investigations by the relevant authorities into alleged unlawful activities in regard to any evidence or findings of any relevant conduct.

In this regard, we are writing to the relevant authorities to highlight our duties in relation to 'Fit and Proper' and indicating that we would like to be kept abreast of the timescales of their

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investigations and of any further information which may assist us in the discharge of our own duties.

Fairness and privacy

Finally, Ofcom's legal duties to protect people from having their privacy invaded have been mentioned in some debates. Our duty in this area concerns unwarranted infringements of privacy in relation to the making and the content of television and radio programmes. For the avoidance of doubt, our privacy duties relate only to broadcasting and we have no jurisdiction in relation to fairness and privacy in newspapers.

Finally, I would like to reassure you and your fellow Parliamentarians that we are very mindful of our duties in this area and very conscious of the level of concern about these matters in Parliament and in the country more widely.

I am copying this letter to Lord Inglewood who Chairs the House of Lords Communications Committee and placing a copy of this letter in the libraries of both Houses. I will also make this letter available on the Ofcom website later today.

Yours sincerely

A rectangular box with a thin black border, used to redact the signature of Ed Richards. The box is empty, indicating the signature has been removed for distribution.

Ed Richards

[Redacted]

IN.P 01

From: OLDFIELD PAUL
Sent: 10 July 2011 13:19
To: ZEFF JON; BEEBY, Sue; [Redacted]
Subject: Fw: Note for No 10

Jon - to see. The assumptions/ options that No 10 are working on. Helpful if our note could address them.

SoS has said he would like to see note before it goes. Probably best to send direct to his gmail copying to me and sue. Let me know when you send and I can call/ text him to make sure he looks at it. His email is

[Redacted]

JH is keen to explore the issue of whether fit and proper person consideration could affect plurality in event of licence revocation as part of options analysis.

Thanks

Paul.

----- Original Message -----

From: [Redacted]
To: OLDFIELD PAUL
Sent: Sun Jul 10 12:59:51 2011
Subject: Re: Please can you call me?

These are the broad fall-backs we briefly discussed. I know you guys think 1) doesn't work - helpful if you could set briefly why not. Your idea about questioning the good faith of the assurances is also interesting - so v helpful if you could also cover that. And something at the top setting out clearly the current position after last week's developments would also be v useful. Please call me any time if any questions. Thanks v much. [Redacted]

1) The closure of NoTW raises new questions about the potential future impact on media plurality of this takeover bid. It is therefore right to look again with fresh eyes at whether the bid should be allowed to proceed, so JH has decided to refer it to the Competition Commission.

2) OFCOM has a responsibility for deciding whether those controlling media companies are fit and proper to hold a UK broadcasting licence. This is an on-going responsibility, not one that is exercisable specifically at a point of ownership transfer. Given the questions that have been raised about practices at NoTW, under NI's ownership, and the way senior management responded to allegations, it is important to be clear as soon as possible whether Sky and its owners are in OFCOM's judgement fit and proper to continue to hold a UK broadcasting licence. This cannot be deferred for years while investigations continue. So JH has asked OFCOM to review its current judgement on these issues as soon as possible and in any event by the end of 2011.

3) The current process for handling media bids in the UK is governed by the EA 2002 (check), legislation passed by the previous government. This legislation makes it impossible for Ministers or Parliament to prevent media takeovers unless independent authorities conclude that they will damage competition or reduce media plurality in a way that is contrary to the public interest. In addition this legislation does not oblige OFCOM to make judgements about fitness and properness at the point of takeover. We will extend the media inquiry we have just announced to include a review of this legal framework. While it is sensible to keep takeovers out of the political process as far as possible, it may well be right to amend the act to ensure that potential takeovers that raise real fitness and properness concerns cannot be approved until these have been addressed. But we will seek early guidance from the inquiry on this issue.

on 3) it is possible that we cd get someone to look into this separately rather than bundling it up with the review.

----- Original Message -----

From: OLDFIELD PAUL [mailto:

Sent: Sunday, July 10, 2011 12:32 PM

To:

Subject: Re: Please can you call me?

Have you got the heywood note?

----- Original Message -----

From:

To: OLDFIELD PAUL

Sent: Sun Jul 10 11:01:34 2011

Subject: Please can you call me?

Sorry, Paul - I really need an urgent word.

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IN.P 02

From: BEEBY, Sue
Sent: 10 July 2011 16:06
To: ZEFF JON; [redacted] OLDFIELD PAUL
Subject: Re: Newscorp

Are we making clear that we are looking into the legal viability of these options rather than just proposing that this is what we could do. I don't think we want to get into a situation where number 10 think we can go ahead with one option when actually legally it wouldn't be robust.

From: ZEFF JON
To: [redacted] OLDFIELD PAUL; BEEBY, Sue
Sent: Sun Jul 10 15:55:58 2011
Subject: Fw: Newscorp

Jeremy

Draft briefing note for No10 attached, agreed with lawyers. Am copying to Paul and Sue but if you'd like a word my mobile is [redacted]

Jon

From: [redacted]
To: ZEFF JON
Cc: [redacted]
Sent: Sun Jul 10 15:28:28 2011
Subject: Newscorp

[redacted]
Legal Advisers to the Department for Culture, Media and Sport
 [redacted]

IN.P 02a

[Redacted]

From: BEEBY, Sue
Sent: 10 July 2011 16:10
To: ZEFF JON; 'jeremy [Redacted] OLDFIELD PAUL
Subject: Re: Newscorp

I also think it is worth including on the list of options writing to ofcom as a matter of urgency asking them to address the following issues that have arisen over the past week.

Letter along the lines of...

Have received numerous consultation responses will of course consult ofcom and oft once we have processed them but there are further questions that have been raised in light of recent events which I would like to seek your advice on in the meantime.

1. Given the closure of the NOTW to what extent does this impact on your original report on media plurality and how would you propose addressing this in the current merger process.
2. I note your advice to John whittingdale on friday 8th july. Can you let me know whether a potential fit and proper persons test would impact on the issue of media plurality, specifically whether we should be considering whether any potential withdrawal of a broadcasting licence to News Corp would have such a significant impact on plurality in the media that we should be considering it as part of the current merger process.
3. Also in light of your statement on fit and proper persons whether we should also be considering the extent to which the UIL can be taken in good faith and relied upon to be legally robust and enforceable.

From: ZEFF JON
To: [Redacted] OLDFIELD PAUL; BEEBY, Sue
Sent: Sun Jul 10 15:35:58 2011
Subject: Fw: Newscorp

Jeremy

Draft briefing note for No10 attached, agreed with lawyers. Am copying to Paul and Sue but if you'd like a word my mobile is [Redacted]

Jon

From: [Redacted]
To: ZEFF JON
Cc: [Redacted]
Sent: Sun Jul 10 15:28:28 2011
Subject: Newscorp

[Redacted]

Legal Advisers to the Department for Culture, Media and Sport

[Redacted]

IN.P.03

[Redacted]

From: OLDFIELD PAUL
Sent: 10 July 2011 19:09
To: [Redacted]
Subject: Fw: Newscorp
Attachments: Newscorp - current position (3).docx

Here's the paper.

We're aiming to issue letters this evening and potentially brief them out tomorrow morning.

Paul

NB my phone has no reception so best number is [Redacted] for rest of today.

From: ZEFF JON
: 'Jeremy [Redacted] OLDFIELD PAUL; BEEBY, Sue
Sent: Sun Jul 10 15:35:58 2011
Subject: Fw: Newscorp

Jeremy

Draft briefing note for No10 attached, agreed with lawyers. Am copying to Paul and Sue but if you'd like a word my mobile is [Redacted]

Jon

From: [Redacted]
To: ZEFF JON
Cc: [Redacted]
Sent: Sun Jul 10 15:28:28 2011
Subject: Newscorp

[Redacted]
Legal Advisers to the Department for Culture, Media and Sport
[Redacted]

IN - P. 03a

[Redacted]
From: OLDFIELD PAUL
Sent: 10 July 2011 19:04
To: [Redacted]
Subject: Re: [UNCLASSIFIED] [Non-Record]

V good. One amend is that we wouldn't tell news corp we were writing to ofcom, simply jh would write to news corp in paralell saying he had concerns as you describe and what was their position.

Worth rememnbering in all this that it must still be sos decision so not to compromise process. No probs me keeping you in touch with process but must be careful beyond that on legal grounds.

Will forward you our b-ground paper now.

From: [Redacted]
To: OLDFIELD PAUL
nt: Sun Jul 10 18:47:53 2011
Subject: [UNCLASSIFIED] [Non-Record]

This is what I was going to put round as a summary of what you've just told me. Is it accurate?

"We are still working on a paper, but this is the lead option which DCMS have identified:

JH will write to Ofcom tomorrow, asking them formally if recent events have changed their position on plurality. The reason why they might is that the judgement that the deal was okay re plurality was based on assumption that NI would legally comply with assurances given re independence of Sky news etc. It is now arguable that their compliance with legal processes etc cannot be taken for granted.

JH will write simultaneously to NI, saying that he is doing this, so they have right of reply.

It is possible - although not certain - that JH may have response from Ofcom by Wed saying they do now have concerns re plurality which justify JH referring deal to Competition Commission.

This is not open and shut legally - perhaps 50/50 chance of success if NI challenged. But challenge etc could take longer than consideration by Competition Commission, so NI may well not bother."

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IN-P 04

From: OLDFIELD PAUL
Sent: 11 July 2011 13:02
To: [Redacted]
Cc: [Redacted]
Subject: RE: [UNCLASSIFIED] [Non-Record]

It's fine.

If really pressed we'd like a line in the middle which says that it is important that those due legal processes are followed.

From: [Redacted] [mailto:\[Redacted\]](mailto:[Redacted])
Sent: 11 July 2011 12:41
To: OLDFIELD PAUL
Cc: [Redacted]
Subject: Re: [UNCLASSIFIED] [Non-Record]

Sorry, Paul - PM chasing for a response to this.

From: [Redacted]
Sent: Monday, July 11, 2011 12:35 PM
To: 'PAUL.OLDFIELD' [Redacted]
Cc: [Redacted]
Subject: Fw: [UNCLASSIFIED] [Non-Record]

Paul - This looks okay to me, but please can you confirm asap?

From: [Redacted]
Sent: Monday, July 11, 2011 12:25 PM
To: [Redacted]
Subject: [UNCLASSIFIED] [Non-Record]

Can u check with lawyers and come and see the PM?

On BskyB deal:

As I've said all along, in this country there are legal processes involved when a media company wants to takeover another media company. Those processes involve the Office of Fair Trading, the Competition Commission and OFCOM.

But I have to say, if I was running this company right now, in this situation, I'd get my house in order first and clear up the mess that's been uncovered before proceeding with this takeover.

[Redacted] Prime Minister's Office | 10 Downing Street | [Redacted]

IN.P. 04a

From: OLDFIELD PAUL
Sent: 11 July 2011 15:16
To: [Redacted]
Cc: Questions; [Redacted]
Subject: RE: PMQs BskyB bid [UNCLASSIFIED] [Non-Record]

We'll do that but this will have to come later I'm afraid. What with a simultaneous statement in the Lords all our team are now either prepping SoS or on hand for the debates.

Paul.

From: [Redacted]
Sent: 11 July 2011 13:33
To: [Redacted]
Cc: [Redacted] OLDFIELD PAUL;
Subject: RE: PMQs BskyB bid [UNCLASSIFIED] [Non-Record]

[Redacted] hanks

Need the facts set out as simply as possible here.

Suggest we start with a timeline:

- Month 2010 bid
- Time: European Commission judgement on competition concludes [important to set this out]
- Time: V Cable statement on plurality
- Time: JH refers to OFT and OfCOM
- 31 Dec OfCOM report
- 3 March - JH announcement and compulsory consultation
- 9 July consultation ends - over 100,000 responses JH states it will take some time to consider
- 11 July - letters to OfCOM

Enterprise Act 2002 - general statement of what the law is on (media) mergers as set out in the Act - quoting where helpful.

Regulators: you could usefully set out which regulator is doing what here. What is the role of the EU competition policy; OFT, Competition Commission; OfCOM

Announcements today

- cover what JH has done. Set out the wider issues of plurality and competition.
- include JH's letters to OfCOM and OFT

JH stament for later today

From: [Redacted]
Sent: 11 July 2011 12:39
To: [Redacted]
Cc: [Redacted]
Subject: PMQs BskyB bid [UNCLASSIFIED] [Non-Record]

I've re-worked the note.

It needs more information on the respective roles of the different regulators etc.

will probably have comments on it.

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IN - P 05

[redacted]

From: OLDFIELD PAUL
Sent: 12 July 2011 12:51
To: [redacted]
Cc: [redacted]
Subject: RE: PMQs BSKyB bid - Role of the Regulators [UNCLASSIFIED] [Non-Record]

[redacted] and [redacted] will correct me if I'm wrong but Fit and Proper Person Test is for OFCOM and them alone.

I agree this isn't crystal clear from SoS' answer yesterday. What he was getting at is that the CC can consider is whether the undertakings News Corp have given/ will give are credible – ie can we trust them. If OFCOM rule News Corp are not fit and proper that would prime facie prevent them from having a broadcast licence, but it would also mean we could be on safe grounds in concluding that we couldn't trust them.

That is a bit technical.

r the PM it is important he is clear that Fit and Proper judgements are for OFCOM and not Jeremy or the CC.

Paul.

From: [redacted]
Sent: 12 July 2011 12:08
To: [redacted]
Cc: [redacted] OLDFIELD PAUL; [redacted]
Subject: RE: PMQs BSKyB bid - Role of the Regulators [UNCLASSIFIED] [Non-Record]

How does this tie in with what the Secretary of State said yesterday?

Duncan Hames (Chippenham) (LD): It is regrettable that undertakings that the Secretary of State had previously secured have been withdrawn today, but will he tell the House why, under the Competition Commission referral, it is possible for the "fit and proper person" test to be applied in the decision?

Mr Hunt: I will tell my hon. Friend why that is the case. Typically, when there is a referral to the Competition Commission, it could decide to block the deal entirely or it could negotiate undertakings, circumstances and conditions under which it would consider it acceptable for the merger to go ahead. The Competition Commission is considering media plurality, just as I did. It is not considering broader competition issues, but if as part of that consideration it decided to accept any undertakings, it would want to be sure that they were credible, which is why compliance with the "fit and proper person" requirements of the Broadcasting Act 1990 will be extremely important.

Could you rework the note I sent back to make all this absolutely clear please

thanks

From: [redacted]
Sent: 12 July 2011 12:02
To: [redacted]
Cc: Questions: [redacted] OLDFIELD PAUL; [redacted]
Subject: RE: PMQs BskyB bid - Role of the Regulators [UNCLASSIFIED] [Non-Record]
Importance: High

[redacted]

The fit and proper test is entirely a matter for Ofcom. Here is our line:

Important to recognise that the "fit and proper" person test is not something triggered by the proposed merger. Ofcom have an on-going statutory duty to ensure that holders of broadcasting licences are and remain fit and proper persons. This is a matter for Ofcom who are taking their responsibility in this area seriously and are already in touch with the relevant authorities. Government has no role in their decisions.

I don't know whether a fit and proper assessment has ever been part of the CC's duties when considering a merger but am copying to the ever-helpful [redacted] at BIS who I hope can advise.

[redacted]

DCMS
2-4 Cockspur Street
London SW1Y 5DH

[redacted]

From: [redacted]
Sent: 12 July 2011 09:00
To: [redacted]
Cc: Questions; [redacted] OLDFIELD PAUL; [redacted]
Subject: PMQs BskyB bid - Role of the Regulators [UNCLASSIFIED] [Non-Record]

Thanks

On your latter point which body then - if any - will be looking at the "fit and proper test"?

Also did the CC once have to look at the fit and proper test as part of their inquiry into a takeover bid? If so when was it removed and why?

Could you also check the attached for accuracy please

For midday latest please

[redacted]


IN: P. 06



From: AMOS, Stephen
Sent: 12 July 2011 15:41
To: OLDFIELD PAUL; PATEL RITA; SMITH, Adam;
Subject: RE: PM Speech



Paul

1. We spoke. I have also discussed with 
2. The risk which we are trying to mitigate here is the risk that, down the line, others will be able to assert that Jeremy did not have an open mind when discharging the quasi-judicial function which Parliament has conferred on him – in legalese, his discretion was fettered.
3. As we all know but it bears repeating, this is only a vote in one house of Parliament and does not change anything legally. After the vote, Jeremy's obligations and decision making role under the Enterprise Act will be unchanged.
4. The version of the motion which we have seen is not directed towards Jeremy but rather at News. If it were directed at him and said that - e.g. - in no circumstances could he approve the merger, then we would want to make representations to Speaker's Counsel about the propriety of such a motion which flew in the face of the law. We are not in that territory.
5. Back to the risk in para 2, the key point is that Jeremy should not vote. Were he to vote in favour, and then subsequently to block the merger after the CC reference, it would be very difficult indeed to defend a JR alleging that his mind was closed on the subject. For the same reasons he should not speak in the debate. As he said rather nicely yesterday he is the only member of the House who is not permitted to air an opinion about this merger, although he is of course free to attend and listen to all exchanges – he could make a virtue of doing that by saying that he is of course keen to hear the full range of points being made. For the record he should make some kind of statement somewhere explaining why he has decided not to participate – i.e. because he has a statutory role to perform in relation to this transaction. He may need to point to this at some point in the future.
6. I am assuming we are talking about a free vote here, albeit one which the PM and other senior colleagues will want to support. The risks to Jeremy's decision making would increase if this were a whipped govt vote, but could ill be mitigated by the steps in the para above.

Happy to discuss further.

Stephen

From: OLDFIELD PAUL
Sent: 12 July 2011 14:58
To: PATEL RITA; SMITH, Adam; AMOS, Stephen;
Cc: AMOS, Stephen
Subject: RE: PM Speech



Am just checking with Stephen and will then talk to No 10.

From: PATEL RITA
Sent: 12 July 2011 14:56

To: SMITH, Adam; AMOS, Stephen; [redacted] OLDFIELD PAUL; [redacted]
Subject: Re: PM Speech

Probably safer for jeremy to abstain. But free vote for others

Sent from my BlackBerry Wireless Device

From: SMITH, Adam
To: AMOS, Stephen; PATEL RITA; [redacted] OLDFIELD PAUL; [redacted]
Sent: Tue Jul 12 14:41:15 2011
Subject: RE: PM Speech

BBC saying the motion is as follows –

“This house believes it is in the public interest for News Corporation to withdraw its bid to buy the shares in BskyB that it does not already own”

I’ve chatted quickly to Jeremy about this and he feels the rest of Government will want to support this motion. Can we therefore clarify whether this is ok. Whether he should participate in the debate. And whether if he does he would abstain on it.

Perhaps we should meet soon to go through these points?

From: AMOS, Stephen
Sent: 12 July 2011 13:14
To: PATEL RITA; SMITH, Adam; [redacted] OLDFIELD PAUL; [redacted]
Subject: RE: PM Speech

Thanks Rita. Good question. This is not a science though.

We are engaged in the business of try to measure differing degrees of risk of successful challenge to Jeremy’s decision making. At the end of the day we will need to able to say that he had an open mind and paid proper regard to all relevant considerations (he decides what’s relevant by looking at the statutory rules governing his role) and ignoring irrelevant ones.

I suggest that a vote where the PM and DPM are the sponsors looks rather like a statement of govt policy and not any different from a whipped vote (although we are into arcane parliamentary procedures rather than law here). It certainly raises the risk to a level higher than that posed by statements to the media such as those already made by the PM and DPM.

From: PATEL RITA
Sent: 12 July 2011 12:54
To: SMITH, Adam; AMOS, Stephen; [redacted] OLDFIELD PAUL; [redacted]
Subject: RE: PM Speech

And if the PM and DPM are backers of the amendment? (rather than saying Govt supports it?)

From: SMITH, Adam
Sent: 12 July 2011 12:53
To: AMOS, Stephen; [redacted] OLDFIELD PAUL; PATEL RITA [redacted]
Subject: RE: PM Speech

What about if we say it's a completely free vote. ie no whipping at all?

From: AMOS, Stephen
Sent: 12 July 2011 12:52
To: SMITH, Adam; [redacted] OLDFIELD PAUL; PATEL RITA; [redacted]
Subject: RE: PM Speech

Legally speaking the issue is whether a government whipped vote in favour of a resolution exhorting News to back out of this merger removes or restricts any discretion with JH has under the Enterprise Act powers.

To my mind such a vote would significantly raise the chances of a successful JR against the SoS – it is in a different league than comments made by the PM and DPM and allows people to run with (and possibly succeed with) arguments that as JH is bound by the convention of collective cabinet responsibility, he really has no room for manoeuvre.

How about -

The Government will abstain from the motion put forward today – because it is not consistent with the law as it stands, as enacted by Parliament. [I have of course already made my own views clear as to what News could be focussing on right now]

From: AMOS, Stephen
Sent: 12 July 2011 12:35
To: SMITH, Adam; [redacted] OLDFIELD PAUL; PATEL RITA [redacted]
Subject: RE: PM Speech

Can we please pause on this point.

Seeking urgent clarification of whether “the government” can vote for the motion. We need to square off JH’s quasi-judicial role with the fact that he is of course a cabinet member bound by collective responsibility. Is one thing for PM / DPM to make comments but another for the government as a whole to swing behind a motion. Will get back to you asap.

S

Stephen Amos
Director – Legal
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

[redacted]
[redacted]

From: SMITH, Adam
Sent: 12 July 2011 12:31
To: [redacted] OLDFIELD PAUL; PATEL RITA; [redacted]
Cc: AMOS, Stephen
Subject: RE: PM Speech

And presumably we could actually say we are voting for the motion (provided Jeremy doesn't)?

From: [redacted]
Sent: 12 July 2011 12:27
To: OLDFIELD PAUL; PATEL RITA [redacted]
Cc: SMITH, Adam; AMOS, Stephen
Subject: RE: PM Speech

It's fine, save that if the vote has no legal effect, then voting for it couldn't put anyone in breach of the law. So it might be prudent to remove that part.

[redacted]

Legal Advisers to the Department for Culture, Media and Sport

[redacted]

From: OLDFIELD PAUL
Sent: 12 July 2011 12:24
To: PATEL RITA; [redacted]
Cc: SMITH, Adam
Subject: PM Speech

No 10 asking me to clear (by 12.45) a bit of PM's proposed speech for any debate tomorrow.

I've tracked some changes in the version they sent me. You happy with the text and my amends? I'll phone them to explain the reasons...

Paul.

Paul Oldfield
Principal Private Secretary to the Secretary of State
Department for Culture, Media and Sport


[redacted]

IN: P. 07



From: OLDFIELD PAUL
Sent: 12 July 2011 15:58
To: AMOS, Stephen; PATEL RITA; SMITH, Adam;
Subject: RE: PM Speech



For the record I talked  through this and gave him two options – free vote and Government supported vote.


They've decided on the Government vote, cognisant of the increased risks of JR. I've explained that Jeremy cannot vote, cannot take part in the debate, and we'll be finding a way to issue some statement to mitigate JR risk in the future about the fact that he remains open minded and has decided not to take part in the vote.

Paul.

From: AMOS, Stephen
nt: 12 July 2011 15:41
To: OLDFIELD PAUL; PATEL RITA; SMITH, Adam;
Subject: RE: PM Speech



Paul

1. We spoke. I have also discussed with 

2. The risk which we are trying to mitigate here is the risk that, down the line, others will be able to assert that Jeremy did not have an open mind when discharging the quasi-judicial function which Parliament has conferred on him – in legalese, his discretion was fettered.

3. As we all know but it bears repeating, this is only a vote in one house of Parliament and does not change anything legally. After the vote, Jeremy's obligations and decision making role under the Enterprise Act will be unchanged.

4. The version of the motion which we have seen is not directed towards Jeremy but rather at News. If it were directed at him and said that - e.g. - in no circumstances could he approve the merger, then we would want to make presentations to Speaker's Counsel about the propriety of such a motion which flew in the face of the law. We are not in that territory.

5. Back to the risk in para 2, the key point is that Jeremy should not vote. Were he to vote in favour, and then subsequently to block the merger after the CC reference, it would be very difficult indeed to defend a JR alleging that his mind was closed on the subject. For the same reasons he should not speak in the debate. As he said rather nicely yesterday he is the only member of the House who is not permitted to air an opinion about this merger, although he is of course free to attend and listen to all exchanges – he could make a virtue of doing that by saying that he is of course keen to hear the full range of points being made. For the record he should make some kind of statement somewhere explaining why he has decided not to participate – i.e. because he has a statutory role to perform in relation to this transaction. He may need to point to this at some point in the future.

6. I am assuming we are talking about a free vote here, albeit one which the PM and other senior colleagues will want to support. The risks to Jeremy's decision making would increase if this were a whipped govt vote, but could still be mitigated by the steps in the para above.

Happy to discuss further.

Stephen

IN. P. 08

[Redacted]

From: OLDFIELD PAUL
Sent: 12 July 2011 16:30
To: [Redacted]
Cc: BEEBY, Sue; SMITH, Adam; PATEL RITA;
Subject: RE: [UNCLASSIFIED] [Non-Record]
Attachments: PM Draft Speech v2.DOCX

[Redacted]

Our strong advice is that we don't dial this up any further on the bid or the process. It backs Jeremy into a v difficult corner and potentially exposes the Govt to JR. Attacking News Corp for alleged wrong doing is fine but pre-supposing what the CC will think, what they'll take into account or what SoS will decide puts us in v difficult territory.

I've suggested two minor amends in the attached which are important to us

- Removing immediate effect. SoS said it yesterday but whilst we have written to the CC to tell them we are referring the exact legal framework for doing so is complex and CC have told us we need to talk some time to get that right. Toning that down would help.
- Changing I to we helps us slightly with JR risk. It doesn't change the sense of what you want but helps us.

Paul.

From: [Redacted]
Sent: 12 July 2011 15:56
To: OLDFIELD PAUL
Subject: FW: [UNCLASSIFIED] [Non-Record]

As discussed. Please could I have something by 4.20...?!

Thank you!

From: [Redacted]
Sent: Tuesday, July 12, 2011 05:52 PM
To: [Redacted]
Subject:

BSkyB BID

Let me turn to the specific issue of the BskyB bid.

Mr. Speaker, despite the police investigation being underway and the public inquiry soon to be up and running...

...we are still hearing shocking allegations by the day.

Allegations that Royal Protection Officers were in the pay of the *News of the World* – that they handed over the contact details of the Royal Family for a profit.

Allegations that the former Prime Minister, Gordon Brown, had his bank details hacked into, and unforgivably, his child's medical records taken too.

And this time, the alleged culprits were not the *News of the World*, but other News International titles.

Mr. Speaker, as both the nature of the malpractice, and the scope of the newspapers involved, widens...

...it is right that the police continue to follow their enquiries and the evidence wherever it takes them.

It is also simply unrealistic to expect both the public and indeed politicians to separate all this from News Corporation's proposed takeover of BSkyB.

Yes, government is subject to the law of the land – and the proper legal processes for takeovers and mergers must be followed.

...but that doesn't mean we cannot express a view.

That's why it is right for this House to have this debate.

And it's why I have made my opinions clear.

If I was running this company right now, with all the problems, difficulties and mess there is, I'd get my house in order first before thinking about the next corporate move.

At the same time, we are also making sure we are following due legal process.

Yesterday, because News Corporation withdrew their Undertaking in Lieu, my Right Honourable Friend, the Secretary of State for Culture, Media and Sport referred the bid to the Competition Commission with immediate effect.

The relevant authorities will have the time to take a look at all the issues...

...and come to a considered and exhaustive decision on whether this takeover should proceed.

It will then be up to the Secretary of State to decide in a quasi-judicial capacity.

For those looking for an indefinite delay, until the criminal investigations are over, let me remind them:

The legal requirements for conduct of a takeover were set out in the 2002 Enterprise Act – an act passed by the last government.

It makes clear that there can be no delay in this judicial process for extraneous reasons.

Let me also remind members opposite, that the only reason we can even consider plurality is not because the last government proposed this in the Bill...

...but because the House of Lords amended the Bill to insist it was considered.

The Secretary of State has scrupulously stuck to his quasi-judicial role and the rules set out in the Enterprise Act.

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IN-P. 10



From: [Redacted]
Sent: 13 July 2011 11:52
To: [Redacted] Questions
Cc: Jeremy Heywood; OLDFIELD PAUL
Subject: RE: OFCOM and fit and proper [UNCLASSIFIED] [Non-Record]

But JH has just called me personally to reinforce point that we cannot legislate retrospectively to block merger. Not convention in this country to do that.

From: [Redacted]
Sent: 13 JULY 2011 11:43
To: [Redacted] Questions
Cc: Jeremy Heywood; 'OLDFIELD PAUL'
Subject: OFCOM and fit and proper [UNCLASSIFIED] [Non-Record]

DCMS have agreed that we can say: "We will review with OFCOM how the fit and proper person test applies."

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