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**NORTHCLIFFE MEDIA**

Trinity Mirror plc telegraphmediagroup



XXXXXX  
House of Commons  
London  
SW1A 0AA

Date

Dear XXX

I am writing to you on behalf of BT, Guardian Media Group, Associated Newspapers, Trinity Mirror, Northcliffe Media and Telegraph Media Group with regard to the proposed takeover of British Sky Broadcasting ("BSkyB") by Rupert Murdoch's News Corporation. Weber Shandwick is working with this group, and providing secretariat support.

As you may be aware, on 4<sup>th</sup> November Business Secretary Vince Cable MP issued an intervention notice and referred News Corporation's proposed acquisition to Ofcom to "investigate and report [to Dr Cable] on the media plurality issues that may arise from this proposed acquisition". The deadline for Ofcom to complete its report is 31<sup>st</sup> December 2010 and Dr Cable has until 15<sup>th</sup> January 2011 to decide whether to refer the case to the Competition Commission for a full inquiry.

Our clients believe that the evident threat to the plurality of news provision and the democratic process presents a compelling case for the takeover to be subject to full and independent scrutiny by the Competition Commission. The group has submitted a detailed case to Ofcom outlining the evidence for this, and some companies have also chosen to make individual submissions. I am pleased to enclose a summary of the key arguments for your information.

We hope that Dr Cable will refer the case to the appropriate competition authorities and would welcome your support in ensuring that the Secretary of State is made fully aware of the issues at stake.

If you require any more information or would be interested in a telephone or face-to-face briefing, please don't hesitate to get in touch on the numbers below.

Yours sincerely,

Jon McLeod  
Chairman  
Weber Shandwick Public Affairs

*On behalf of*

BT, Guardian Media Group, Associated Newspapers, Trinity Mirror, Northcliffe Media and Telegraph Media Group

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## Summary of arguments to Ofcom against the proposed NewsCorp/BSkyB merger

- News Corporation does not already control BSkyB - currently it only owns 39% of shares.
- Purchasing the remaining 61% will give News Corporation outright control. BSkyB's operations could then be directed for the financial and/or political benefit of News Corporation.
- The proposed takeover would give News Corporation complete control of one of only two commercial television news providers in the UK. And in addition to Sky News, BSkyB also provides the news content for Channel 5 News and virtually all commercial radio news.
- News Corporation is already by far the largest supplier of newspapers in the UK, with 37% of total newspaper circulation. The news outlets supplied by the merged entity will reach at least 52% of the adult population.
- This is an evident threat to the plurality of news provision in the UK. Any properly functioning democracy relies on a wide range of independent news providers.
- Combining the largest newspaper group with the key commercial broadcast news provider will also distort the fair and objective reporting of stories between media. BSkyB would have a commercial incentive to favour stories featured in News Corporation newspapers, reducing the ability of other sources to contribute to the wider news agenda.
- The merged business would have a strong incentive to offer consumers a "bundle" of Sky TV and a News Corporation newspaper/online subscription. Such a strategy would place severe financial pressure on competing newspapers, threatening their survival or, at the least, weakening their ability to contribute to the news agenda. This in turn would reduce plurality even further.

**Please turn over for a more detailed analysis of these arguments.**

### **News Corporation does not already control BSkyB**

Currently, the fact that News Corporation is only a minority shareholder in BSkyB means that the directors of BSkyB legally cannot seek to favour News Corporation over other shareholders. Independent directors are able to act as a constraint on News Corporation's influence on BSkyB at a boardroom level. If News Corporation owned 100% of BSkyB these constraints would be removed and BSkyB's operations could then be directed for the financial and/or political benefit of News Corporation.

The House of Lords Select Committee on Communications reported that News Corporation's Chairman and Chief Executive, Rupert Murdoch, "exercises editorial control [over wholly owned News Corporation outlets] on major issues – like which Party to back in a general election or policy on Europe." Indeed, it has been reported that the editors of all 175 significant News Corporation titles were supportive of the decision to go to war in Iraq, a degree of consistency which shows not just the dominant force of the proprietor but the limits on internal plurality. In contrast, it is clear that News Corporation does not and cannot currently control Sky News – indeed, Mr Murdoch has expressed his frustration at his inability to influence Sky News, openly telling the Committee that the only reason Sky News was not more like Fox News was that "nobody at Sky listens to me". The Competition Commission has previously confirmed that News Corporation does not currently control Sky News.

### **The takeover combines two key news sources**

News Corporation is by far the largest UK newspaper supplier, with a circulation of almost 8 million amounting to 37% of total newspaper circulation in the UK. If the takeover is allowed to proceed, the merged entity would additionally control one of only two commercial suppliers of television news (ITN, supplying ITV and Channel 4, being the other) and virtually all commercial radio news.

News Corporation and BSkyB are two of the strongest and largest voices in the UK news media – with unrivalled financial and editorial resources. It is estimated that between them News Corporation and BSkyB have an editorial staff of over 2,100 – which is almost as many as all the other national newspapers combined (estimated at around 2,650). Applying a standard advertising measurement of reach, the news outlets supplied by the merged entity would reach at least 52% of the adult population. Therefore, the takeover would seriously and immediately reduce plurality by combining the two of the largest and strongest news providers in the UK.

### **How the news agenda is set in the UK**

There is a clear relationship between different forms of media; they do not report news independently of one another. Rolling TV news plays a key role in setting the real time news agenda. Conversely, newspapers rely on broadcasters reporting their stories to get coverage beyond their direct readership. In a market with a wide number of independent news sources this cross-fertilisation of news and ideas gives consumers exposure to a more diverse news agenda. However, the process relies on objective reporting of each platform's output by the other.

This is clearly threatened when there is cross-ownership of important outlets in both newspapers and TV e.g. BSkyB will have a direct commercial incentive to favour stories in News Corporation newspapers thereby reducing the diversity of the news agenda. As a result, the takeover will further reduce plurality by restricting third parties' ability to influence the agenda.

### **The commercial impact on other news providers**

The merger will give News Corporation increased power to push consumers towards its other media outlets. For example, the merged business would have a strong incentive to offer consumers a bundle of Sky TV and a News Corporation newspaper subscription (whether print or online or both). Such a bundling strategy would translate directly into greater financial pressure on competing newspapers, threatening their survival or, at the least, weakening their ability to compete.

### **No obvious remedies**

There is no obvious remedy to address the plurality concerns; in particular, editorial independence undertakings alone would be ineffective. Therefore, it is essential that any concerns identified by OFCOM are subject to a full investigation by the Competition Commission.



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Dear

## NEWS CORP/BSKYB MERGER

I am writing on behalf of the alliance of media organisations - BT, Guardian Media Group, Associated Newspapers Ltd, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group – that has opposed the above merger.

Members of both Houses will be aware of OFCOM's initial advice to the Culture Secretary that the merger would give rise to serious media plurality concerns and should be referred to the Competition Commission; and the fact that the Culture Secretary was initially minded to accept this advice.

As we now know, the Culture Secretary went on to revise this position. He announced on Thursday 3 March that he was minded to accept undertakings from News Corporation and clear the way for the takeover, subject to a consultation period ending Monday 21 March.

This letter sets out why the alliance believes the proposed undertakings will be ineffective and will not achieve their stated aim of protecting plurality in news media. I set out below the main arguments that lead us to believe the undertakings should not be accepted and support our view that that this matter should still be referred to the Competition Commission. I hope that you find the arguments persuasive, and may find time to write to the Secretary of State.

Our reasons for opposing clearance of the proposed remedy without a full Competition Commission investigation can be summarised as follows:

1. **Newco, the new publicly listed spin off company which will run Sky News, will be in a state of economic dependency vis-à-vis News Corporation.** Newco and Sky News will rely on News Corporation for 85% of its revenues and for its access to the market via the all-powerful digital satellite BSkyB platform. Newco will be tied into the royalty-bearing brand licensing agreement with News Corporation for the Sky News and other associated brands. This will provide a ready means for News Corporation to turn the financial screw on Newco if it so wishes to exert influence.
2. **The safeguards for editorial independence are weak and of the sort that News Corporation has previously being adept at undermining.** The main board of Newco will still have News Corporation 'placemen' on it, able to exert significant influence over Sky News. Only one of the independent

directors of Newco will be required to have editorial or senior journalistic experience. The definition of independence in the undertakings is weak. The remedy relies on an unspecified 'principle of editorial independence'. The safeguards for editorial staff are too legalistic and written in employment law terms. They require editorial staff to put themselves into dispute with their employer in defence of editorial independence, which is likely to be regarded by staff as an extreme and risky step. The proposal for a Sub Committee of the main board of Newco to oversee this is a remedy precisely of the sort that has previously been undermined by News Corporation. On this issue we agree with the views of James Murdoch, current chairman of BSkyB:

*“[W]e must have genuine independence in the news media. Genuine independence is a rare thing. No amount of governance in the form of committees, regulators, trusts or advisory boards is truly sufficient as a guarantor of independence... On the contrary, independence is characterised by the absence of supervision and dependency.”<sup>1</sup>*

3. **Neither OFCOM nor the OFT regard this remedy as a sustainable solution.** The OFT, in its advice to the Culture Secretary, warns that the proposed remedy is “unlikely to be effective” beyond the short to medium term (ie beyond ten years or potentially even less). OFCOM, in its advice to the Culture Secretary, specifically states that the remedy is “not a permanent solution”. OFCOM also recognises that the market will change a lot in the next ten years and agrees that ten years is, in that context, therefore “long term”. But this does not amount to advice as to the appropriate duration of the remedy.
4. **The proposed consultation is insufficient.** The OFT advises that the Culture Secretary should ‘test further the viability and robustness’ of the commitments from News Corporation during the consultation process. The undertakings will in fact be composed of a series of detailed draft contracts between News Corporation and Newco. We do not regard it as practically possible to prepare, review and anticipate the complex effects of such contracts in a two week consultation period. In any event, some of the key elements of the arrangements have not been made public.
5. **The remedy puts too much power in the hands of the Culture Secretary, rather than independent regulators.** There are at least seven different ways in which the Culture Secretary can be required to approve or agree to behaviours governed by the undertakings, which make them incredibly susceptible to more or less implicit political interference in future. In any event, all the undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco. This would require the consent of and consultation by the Culture Secretary. However, it is well known that Sky News is loss-making. Were it to fall into economic distress, a bid by News Corporation to increase its stake in Newco to ‘save Sky News and protect plurality’ can readily be envisaged.

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<sup>1</sup> James Murdoch – MacTaggart Lecture (2009).



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6. **The law to protect plurality has failed and needs urgent strengthening.** In its advice to the Culture Secretary, OFCOM says that the current laws protecting plurality do not work well. OFCOM urges a wider review with a view to creating a system that does not require a transaction to take place for issues of plurality to be examined by the regulator. We agree with this. The need for such a review is intensified by the increase in market power that will be exerted by the merged News Corporation/BSkyB entity. It will be in a position to restrict or distort competition through cross-promotion, bundling, banning rivals' advertisements and distorting the advertising market with cross-platform deals. These are issues of massive importance to the industry, especially at a time of real commercial pressure, but which the Secretary of State was able to ignore completely in his consideration of this takeover. We need a regulatory regime able to factor in these issues and their likely effect on pluralism.

**In summary:**

We regard the proposed undertakings as being fraught with uncertainty and unlikely to safeguard plurality. We do not believe that, given these concerns, and those of many others in civil society, the Culture Secretary should accept these undertakings, but should forward the matter to the Competition Commission for a full investigation.

Please do get in touch if any further information on this issue is required to assist you in your Parliamentary duties.

Yours sincerely



Jon McLeod

On behalf of BT, Guardian Media Group, Associated Newspapers Ltd, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group