4th January 2011

The Right Honourable Jeremy Hunt MP
Secretary of State for Culture Media & Sport
Department for Culture Media & Sport
2-4 Cockspur Street
London
SW1Y 5DH

Re: News Corporation – BSkyB

You will by now have received advice from Ofcom in relation to the proposed acquisition by News Corporation of the 60.9% of shares in BSkyB that it does not already own. We presume that you will also have been passed and will have read all of the correspondence on this matter that was sent to Vince Cable.

The purpose of this letter is to urge you to refer the possible merger to the Competition Commission so that proper consideration is given to the public interest concerns of a reduction in plurality of media ownership in the UK.

Change in Control

We are concerned that there may be an assumption that - as News Corporation holds 39.1% of the shares in BSkyB and has nominated directors on its Board - it already effectively controls BSkyB and thus there would be no material change should it move to outright ownership.

Trinity Mirror believes that this is both wrong in law and in the practical day to day running of a public company.

At its present level of ownership News Corporation can exert *negative* control. Its shareholding block could be used to *prevent* certain corporate events in particular anything requiring the passing of a Special Resolution by shareholders. It is not able however to impose *positive* control. It cannot *force* BSkyB to do anything.

Currently News Corporation undoubtedly has *material influence* over the running of BSkyB both by the size of its shareholding and by the number of News Corporation employees or representatives on the BSkyB board. A move to 100% ownership will be clear change in status.

Trinity Mirror believes that there has been an attempt to underplay the influence on the management and running of BSkyB of the presence of independent non-executive directors who among other things ensure that BSkyB is run in the commercial interests of all its shareholders and long-term commercial decisions are not taken solely in the interests of News Corporation. Such constraints would, of course, disappear if BSkyB were to become merely a subsidiary of News Corporation.

Impact of Change on plurality

A free flow of news from various sources – plurality – is at the very apex of societal importance. It is axiomatic that, if the number of sources of news is reduced or if its supply is concentrated in ownership, plurality is diminished and with it the democratic process threatened. It is this that is the very nub of the concern that any merger of News Corporation and BSkyB will immediately operate against the public interest.

We have an additional concern that the creation of a media business of the scale of a merged News Corporation/BSkyB will have a detrimental effect on the viability of Trinity Mirror plc and the long term health of its newspapers.

The Mirror titles play a particular role in society being the only national newspapers to adopt a consistent left of centre political position and are a vital part of the democratic system in the United Kingdom. *The Daily Mirror* and *Sunday Mirror* were the only national newspapers that took a pro-Labour standpoint at the last general election.

The regional press plays a very significant role in local communities and are the only outlets that regularly report the workings of the lower courts and council meetings, carry local planning notices and hold local politicians to account. Local and regional newspapers adopt a neutral stance in party politics but are often the only media outlets that report on the work of individual members of parliament and allow them to speak directly to their constituents. As the largest publisher of regional and local tiles when judged on circulation, Trinity Mirror is the custodian of a significant constituent of the democratic matrix in the United Kingdom.

Although News International, the UK subsidiary of News Corporation, has always denied either occupying or abusing a dominant market position, there is no doubt that it is aggressively protective of its market share. Starting with the so called newspaper price wars of the early 1990's through to the present day, News International has shown that it is prepared to sustain either very heavy losses or long-term reductions in profit through cover price discounting to increase or maintain market share for *The Times* and *The Sun.*

Our concern is that, without the restraining impact of the need to look to the interests of non-News Corporation shareholders in BSkyB, decisions that make no commercial sense in the short term could be taken in the perceived greater long-term good of News Corporation.

Possible steps could include:

1. The removal of any advertising or promotional spend in Trinity Mirror titles – The *Daily Mirror* being viewed as the principal competitor to the News International title *The Sun.* BSkyB currently spends in the region of £3 million per annum on promotion and advertising in Trinity Mirror titles. It is clear that such a step would deny BSkyB itself access to *Mirror* readers and would not make commercial sense from BSkyB's point of view but would be very damaging to the health of Trinity Mirror's titles and therefore advantageous to News International.

2. Products currently sold by the separate companies could immediately be bundled together into subscription packages. It is easy to see bundles that would combine the BSkyB TV channels with home delivered copies of *The Times* or *The Sun.* This concept is even more likely for News Corporation's paywall protected web versions of their newspapers. A BSkyB TV premium bundle, including access to tablet and smartphone app versions *The Times* is entirely feasible. Such a proposition would be entirely unmatchable by stand-alone newspaper publishers.

3. A fully integrated News Corporation/BSkyB would see each limb having access to the almost unmatchable promotional capabilities of the other. Whether this is done through straight "house ads" or through cross fertilisation of star columnists, presenters and flattering TV reviews and features is immaterial.

4. Of course conditional selling – the refusal to take advertising in one title (normally the stronger) unless space is also bought in a weaker product – is prohibited. We are concerned that whilst there may be no illegality, the ability to create "packages" for advertisers unmatchable by other media outlets would give a combined News Corporation and BSkyB a material unfair advantage and cause serious damage to competitors.

5. Ofcom will be aware of the practice by which media organisations encourage advertisers to enter into "solus" arrangements under which all their advertising is based with a single outlet. If a solus deal cannot be achieved then share deals are negotiated under which an agreement is made for a percentage of all advertising to be placed with one organisation. Again, the sheer size of a combined News Corporation/BSkyB and its reach within the UK would give it a significant advantage in negotiating solus or share deals.

6. The sheer financial scale of the combined entity would enable the continued cross subsidy of deep cover price discounting on News International titles to the long-term detriment of their competitors.

Trinity Mirror reognises that a number of the above concerns could be categorised as "competition" matters rather than having any immediate and direct impact on plurality. However, it is the ability within an integrated News Corporation/BSkyB to use a combination of all or some of the above to protect its position to the detriment of others is of concern. Trinity Mirror is concerned that the long-term impact of a combination of all or some of the above will have a detrimental impact on the commercial viability of our existing portfolio of products with an additional threat to the plurality of news supply in the UK.

We believe that given the potential impact of a combined News Corporation/BSkyB a proper airing of all concerns should be allowed and urge you to refer the issue to the Competition Commission.

Sly Bailey