

Confidential

20 January 2011

Rt Hon Jeremy Hunt MP
Secretary of State
Department for Culture, Media & Sport
2-4 Cockspur Street
London SW1 5DH

Your reference

Our reference

BJFL

Direct line

Dear Mr Hunt,

News Corporation/BSkyB

I write to you further to my letter of 12th January. As before, I write on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group (together the "Concerned Parties").

It is now being reported (notably in today's Financial Times) that News Corporation has offered to divest Sky News – by way of remedial undertakings in lieu of reference to the Competition Commission ("CC").

This suggests a recognition by you of the substantial plurality issues raised by the proposed merger.

In order to be an effective remedy to those issues however, a divestment of Sky News would require editorial, operational, financial and commercial independence:

- Freedom from direct editorial influence – this would require, at least, that News Corporation (i) has no role in appointing or dismissing editors, (ii) has no role in setting editors' remuneration or other terms of employment, (iii) be prohibited from offering financial inducements such as positions in other News Corporation outlets (iv) be prohibited from communicating its preferences to the editor.
- Operational independence – this would require that News Corporation could not impede the operation of Sky News in order to influence content. For example, it would not be acceptable for (i) Sky News to be reliant on a pool of journalists shared with News Corporation; or (ii) Sky News to be reliant on News Corporation's broadcasting infrastructure, where News

Corporation could provide less favourable distribution in the event that it wished to influence Sky News.

- Financial independence – this would require Sky News to have access to sufficient sources of income to continue to fund its own news-gathering and distribution. It would not be acceptable for Sky News to be reliant on News Corporation for a substantial portion of its income, such that News Corporation could threaten to reduce funding in the event that it wished to influence Sky News. On the other hand, it is difficult to see how Sky News would be viable as a stand alone operation. I note here that in its submission to Ofcom, BSKyB emphasised how reliant Sky News is on financial support from BSKyB:

“It is also relevant that Sky has invested for many years, and continues to invest, in the operation of Sky News as a distinct, impartial and independent news service, despite the unattractive returns available from such investments given the presence (among other services) of publicly funded rivals such as BBC News. Indeed, the Board of Sky (including the members of the Board connected to News Corporation) have for many years authorised growing investment in Sky News to that end as part of Sky’s overall annual budgeting process.”

- Commercial independence – this would require Sky News to have its own market presence e.g. with its own marketing capability. For example, it would not be acceptable for Sky News to rely on News Corporation to market its advertising slots, such that News Corporation could materially affect Sky News’ commercial success. Any commercial deal with News Corp would have to be at arms length.

The Concerned parties find it difficult to see how that could be achieved without wholesale divestment of BSKyB.

Divestment of stand alone Sky News would also not address concerns around bundling and other forms of exclusionary behaviour.

More generally, the issues are complex and not “clear cut”. As per my earlier letter, the only sensible procedure in such a case is to refer the matter to the CC where those issues can be fully debated.

Yours sincerely,

Bertrand Louveaux
bertrand.louveaux@slaughterandmay.com

cc. Stuart Brand