

From: Bavasso, Antonio:CO (LN)
Sent: 10 June 2011 11:24
To: Sheldon Mills
Cc: 'Nicholas Scola'; clive.carter.; Stephen.Unger.;
Marco.Marini.; Nuala.Cosgrove.;
Jess.Hinings.; Jeff.Palker.;
Andrea.Appella.; Anil.Jhingan.; Long, Dominic:CO (LN);
Darbon, Cerry:CO (LN); 'KAYE VICTORIA'
Subject: Revised UILs - News/BSkyB - Confidential (0012561-0000367)
Categories: Copied to Virtual File
Attachments: CO-#14105919-v2-Draft UIL 10 June.DOC; CO-#14260923-v1-
DV UIL 1 March Consultation - UIL 10 June.PDF; CO-#14261124-v1-
DV UIL 17 May - UIL 10 June.PDF
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OriginalSubject: Revised UILs - News/BSkyB - Confidential
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CONFIDENTIAL

Dear Sheldon

Further to our calls and the emails below, we have received on Wednesday from DCMS the latest mark up of the Carriage Agreement and the Brand Licence Agreement. We have responded to DCMS yesterday with our final comments (which also include the wording on certain financial provisions that has been discussed separately between John Webster and Karl Holmes and which was also provided to John as a stand-alone rider).

On that basis I am now in a position to revert with a revised set of UILs which confirms the position on the points that needed to be closed off and includes the wording sent to John on a stand-alone basis.

The minor clarifications in sections 4.5(iii) and 4.7(iii) have been suggested by DCMS following the Pinsent Masons review.

The new draft UIL is provided in a clean version as well as with two Deltaviews tracking changes against, respectively, the last full version submitted of 17 May and the consultation version of 1 March.

As previously discussed with Nick I am also copying Victoria Kaye of DCMS.

Best wishes

A.

ANTONIO BAVASSO
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From: Nicholas Scola [REDACTED]
Sent: 24 May 2011 19:15
To: Bavasso, Antonio:CO (LN)
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED];
Marco.Marini [REDACTED]; Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED];
Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED]; Long,
Dominic:CO (LN); Darbon, Cerry:CO (LN)
Subject: RE: Sections 2.1 and 5.1 of UIL (0012561-0000367)

Dear Antonio,

Further to our call, our proposed wording for section 2.1 would read:

2.1 News shall effect the spin-off of the Sky News business into an independent English public limited company, Newco, the shares of which will be publicly traded, using its best endeavours and acting in good faith, at the Closing Date or as soon as reasonably practicable following the Closing Date and in any event within 9 months of the Closing Date, subject to any extension of time agreed with the consent of the Secretary of State. In effecting the spin-off of the Sky News business in accordance with section 2.2 below, News shall not take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did prior to the Transaction. Shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky in the same proportions as their shareholdings in Sky.

We look forward to receiving your wording in relation to the appointment of a Monitoring Trustee (sections 6.5-6.7).

Kind regards

Nick

Nicholas Scola | Deputy Director, Mergers | Office of Fair Trading
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T: [REDACTED]

From: Antonio.Bavasso [REDACTED]
Sent: 18 May 2011 19:52
To: Nicholas Scola
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED];
Marco.Marini [REDACTED]; Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED];
Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED];
Dominic.Long [REDACTED]; Cerry.Darbon [REDACTED]
Subject: Sections 2.1 and 5.1 of UIL (0012561-0000367)

CONFIDENTIAL

Dear Nick

further to our call earlier today I can confirm that News would also be available for a call to discuss the outstanding points on the UILs tomorrow at 6.30pm and would like to proceed on that basis.

With regard to section 2.1 this is the wording that News would propose to add which I hope will prove uncontroversial.

2.1 News shall effect the spin-off of the Sky News business into an independent English public limited company, Newco, the shares of which will be publicly traded, using its best endeavours and acting in good faith, at the Closing Date or as soon as reasonably practicable following the Closing Date and in any event within 9 months of the Closing Date, subject to any extension of time agreed with the consent of the Secretary of State. In effecting the spin-off of the Sky News business, News shall not knowingly take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as it did prior to the Transaction in the manner contemplated by these undertakings. Shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky in the same proportions as their shareholdings in Sky.

The first addition is designed to avoid catching inadvertent action. The second and third are designed to ensure that the provision is placed in the right context by anyone looking at it without the benefit of the detailed discussions that we have had OFT and OFCOM and that the additional language you proposed is not interpreted as suggesting obligations other than the ones set out in the UILs themselves. I note from your email below that this appears to be common ground so I hope that we can reach agreement on this.

With regard to section 5.1 News still questions the need to add further language in this part of the undertakings which relate to agreements that are to be "arm's length", "fair and reasonable", and are subject to a Secretary of State right of approval (other than for agreements relating to services widely available from a number of third parties). Referring to concepts which are extraneous to these individual agreements would create confusion and is unnecessary.

Unless you confirm that, based on this email, the OFT and OFCOM consider that no further call would be useful or necessary we will circulate dial in by noon tomorrow.

Best wishes

A.

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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

WHEREAS:

- (a) News Corporation proposes to acquire the shares in British Sky Broadcasting Group plc that it does not already own.
- (b) On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 31 December 2010, Ofcom provided its report to the Secretary of State on issues of media plurality (as provided for in Article 4A of the Order) and on 30 December 2010 the OFT provided its report to the Secretary of State on the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.
- (d) The Secretary of State considers that the conditions for referring the Transaction to the CC under Article 5 of the Order are met and, absent any offer of undertakings from News, he would be minded to refer the Transaction to the CC.
- (e) The Secretary of State has a discretion to accept undertakings in lieu of reference from News under paragraph 3 of Schedule 2 of the Order:

"The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate."

- (f) The Secretary of State considers that the undertakings given below by News are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

NOW THEREFORE News hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

REDACTED

Comprising 15 pages