

## Written Ministerial Statement: NewsCorp/BSkyB merger

Thursday 30 June 2011

**The Secretary of State for Culture, Olympics, Media and Sport (Mr Jeremy Hunt):** I am today publishing the results of the consultation on the undertakings in lieu I launched on 3 March alongside the subsequent advice I have received from Ofcom and the OFT. The consultation did not produce any information which has caused Ofcom and the OFT to change their earlier advice to me. I could have decided to accept the original undertakings. However a number of constructive changes have been suggested, and as a result, I am today publishing a revised, more robust set of undertakings and will be consulting on them until midday Friday 8 July.

As previously, I was not required to involve independent regulators in assessing the revised undertakings. However I have again done so, and sought their independent advice. I am today also publishing that advice, which after careful consideration I have decided to accept.

### Background

On 3 March I informed the House that based on advice that I had received from OFT and Ofcom, I was minded to accept undertakings from News Corp in lieu of a reference to the Competition Commission. As the Enterprise Act 2002 requires, I published these undertakings for a public consultation which ended on 21 March.

I received over 40,000 representations to this consultation, including a very large number of near-identical responses as a result of internet campaigns. I have placed summaries of the main responses on the DCMS website. I met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May on 24 March and met Avaaz on 15 April. Notes of meetings will be published at the end of the process.

The substantive points have been carefully considered by me, advised by the independent regulators.

### The Carriage and Brand Licensing Agreements

The Carriage and Brand Licensing Agreements are an important part of this process and I will only accept the undertakings once I have approved these agreements.

These documents have been reviewed in great detail by OFT, Ofcom and external lawyers. I believe that their independent, expert advice provides confidence that the undertakings and key Agreements are robust. They have concluded that the drafts of the Carriage Agreement and the Brand Licence Agreement are now fully consistent with the proposed undertakings. In addition, OFT confirm that the terms of the Carriage Agreement and Brand Licensing Agreement mean that Sky News will be practically and financially viable for the lifetime of the carriage agreement. I can now therefore confirm that I am satisfied with both Agreements and am able to approve them in line with the requirement in the undertakings. I will not be publishing these Agreements given the nature and the extent of the commercially confidential material they contain.

### Undertakings in Lieu

I received advice from Ofcom and OFT on 22 June, copies of which have been placed on the DCMS website. Both regulators are clear that the points raised in the consultation exercise do not require them to change their previous advice to me. Nevertheless, there have been some constructive suggestions for strengthening the undertakings which I am minded to accept.

#### *Editorial Independence*

A number of changes have now been made to the undertakings to strengthen further the arrangements for editorial independence:

Sky News' Articles of Association set out the definition of independent directors; Meetings of the board of Sky News about editorial or journalistic matters will only be quorate if an Independent Director with senior editorial and/or journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee. This is a response to representations that these arrangements could be undermined if this Director was often unavailable for meetings for whatever reason. The change will ensure that Sky News organises its business so

as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings.

The appointment of a Monitoring Trustee whose main role is to ensure that News Corp complies with the undertakings and make sure that News Corp does not do anything "that would prevent Newco [i.e. the spun off Sky News] being placed in an overall position of editorial, governance, commercial and financial independence in which it will contribute to plurality as Sky News did prior to the Transaction"

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### ***Business viability***

Some representations were made about Sky News' continued financial viability. I consider that Sky News' financial viability is adequately secured through the Carriage and Brand Licensing Agreements. However, in the light of representations received in response to the consultation exercise, I am proposing to modify the undertakings to ensure that Sky continues to cross-promote Sky News on its channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date on which the undertakings are accepted. This is important to ensure that Sky News continues to enjoy the same promotional support as the current business.

Also, the Monitoring Trustee will provide advice to me in my review of the key operational agreements requiring my approval to ensure that they are fair and reasonable.

### ***Articles of Association***

Because so many of the safeguards are contained in the Articles of Association, including the requirement that Sky News' services will abide by the principle of editorial independence and integrity in news reporting, the undertakings have been amended so that I have to approve them. Furthermore, News Corp has offered an additional undertaking not to attempt to cause Sky News to act in breach of its Articles of Association. A copy has been published along with the consultation document and the revised undertakings.

These are the main changes. All the changes are set out in the published revised undertakings, and a more detailed explanation of the reasons for the changes is included in the consultation document and OFT's report. In my view, they provide a further layer of very important safeguards. As amended, I believe that the undertakings will remedy, mitigate, or prevent the threats to plurality which were identified at the start of this process. I therefore propose to accept the undertakings in lieu of a reference to the Competition Commission.

I have today placed on my Department's website a revised version of the undertakings and an associated consultation document. There will now be a final consultation period starting today and ending at midday on Friday 8 July. During this time all interested parties will be able to express their views on the revised undertakings.

Once again I will seek the advice of Ofcom and the OFT on any responses to this consultation. As expert regulators they are best placed to thoroughly understand the issues and to offer comprehensive and impartial advice. Once I have considered these representations and the independent regulators' advice, I will reach a decision on whether I still consider that the undertakings should still be accepted in lieu of a reference to the Competition Commission. If, after the consultation, I remain of the view that the undertakings properly address the concerns about media plurality, I will accept them and not refer this merger to the Competition Commission.

I am required to publish the revised undertakings in Lieu and an explanation as to why I have made the proposed changes, and I have done so. In the interests of transparency I have also published a number of other documents where there is no legal requirement upon me to do so. These are: the advice I have received from OFT and Ofcom; the Articles of Association of Sky News; and a summary of responses to the consultation process. The Carriage Agreement and the Brand Licence Agreement have not been published given the nature and the extent of the commercially confidential material they contain. I hope that this openness will help strengthen public confidence in the process and decision.

### **Other issues raised in the consultation**

During the consultation period, a number of issues were raised that were not material to the issue of media plurality.

A number of respondents raised competition issues. In addition to the fact that this could not be considered as part of the media plurality public interest test, these issues have already been considered by

the European Commission which concluded on 21 December last year that the increased shareholding would not significantly impede effective competition.

Some respondents also argued that News Corp could not be relied upon to abide by the requirements set out in the undertakings, citing previous guarantees and assurances given by News in the past, and the current phone hacking allegations against The News of the World.

I have taken the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, I believe that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to my consideration.

I would also like to draw attention to a point stressed by Ofcom in its report. Namely, that the undertakings must be assessed against the fact that the plurality concerns arose out of a change in the degree of control News Corporation has over Sky. The undertakings do not and should not seek to establish Sky News in a position where News Corporation has no relationship with it at all, because today News Corporation controls 37.19% of Sky's voting shares.

I am committed to maintaining the free and independent press for which this country is famous. I have sought and published independent advice throughout this process. I have listened carefully to points made in the consultation and amended the undertakings where appropriate. I have also gone for maximum transparency whilst taking reasonable account of commercial confidentiality considerations. I continue to believe that, if I allow this deal to proceed, Sky News will be able to continue its high-quality output and in fact will have greater protections for its operational and editorial independence than those that exist today.

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