

23 December 2010

Andrew Rees
Deputy Director, Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

John Pheasant
Partner
[REDACTED]

Our ref PHEASJ/2612625.1
Matter ref A0020/78918

Dear Mr. Rees

NEWS CORPORATION - BRITISH SKY BROADCASTING - OFCOM REPORT

I refer to the European intervention notice of 4 November 2010 concerning the proposed acquisition by News Corporation ("News") of the remaining shares in British Sky Broadcasting Group plc that News does not already own ("Transaction").

As News has made clear in its public statements, it has been shocked and dismayed by the views of the Secretary of State for Business, Innovation and Skills, Dr Vince Cable, which came to light during the course of 21 December.

We note the 21 December announcement by the Prime Minister that all responsibility for competition and policy issues relating to media, broadcasting, digital and telecoms sectors will be transferred immediately to the Secretary of State for Culture, Olympics, Media and Sport. We also note that this transfer of responsibility includes full responsibility for Ofcom's activities in these areas, including in relation to the Transaction.

While the removal of the Secretary of State for Business, Innovation and Skills and his department from a decision-making role in relation to the Transaction was clearly required, News still finds itself in the entirely unsatisfactory position that the original decision to issue an intervention notice under section 67 of the Enterprise Act 2002 was taken by a Secretary of State who was motivated by bias.

Ofcom is now in the process on preparing a report ("Report") by 31 December 2010 on "the media public interest consideration mentioned in the European intervention notice concerned", which in this case is:

"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience".

News provided detailed submissions to Ofcom on 23 November and had meetings with Ofcom on 22 November and 2 December.

Ofcom sent its Issues Letter on 10 December. News met Ofcom on 15 December to provide its initial comments on the Issues Letter and to seek clarification of the issues identified by Ofcom

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and the reasons, in the light of the relevant legal test, why Ofcom expressed these to be "concerns" relevant to the application of that test.

News formed the clear view from the meeting on 15 December that Ofcom has identified issues which are not relevant for the application of the relevant legal test, correctly understood. Ofcom's failure to relate its preliminary analysis to the overriding issue of the sufficiency of media plurality for a relevant audience in the UK effectively deprived News of any opportunity to understand and comment on Ofcom's analysis before Ofcom reports to the Secretary of State. In addition, News considers that in its Issues Letter Ofcom did not carry out a proper analysis of the range and variety of voices available to a UK audience. News submitted a further written submission on 17 December setting out the errors in Ofcom's approach and identifying what it believes to be the correct approach to the application of the relevant legal test.

News continues to believe that, focusing on the legal test rather than the plethora of unsubstantiated assertions that are made by complainants, the issues in this case are in fact quite well defined and straightforward and that the Transaction cannot be said to lead to any reduction in the sufficiency of plurality.

Notwithstanding the opportunity to make submissions to Ofcom, News remains deeply concerned that the approach adopted by Ofcom will result in a Report which will not provide a proper basis on which the Secretary of State (now the Secretary of State for Culture, Olympics, Media and Sport) can exercise his judgment as to whether the relevant legal test is or is not satisfied or, therefore, whether to refer or not to refer the Transaction to the Competition Commission. News will in parallel be issuing a Freedom of Information Act request aimed at establishing whether and how, and if so in what terms, the biased approach of the Secretary of State for Business Innovation and Skills may have been communicated to Ofcom in relation to its review.

In the light of these deep concerns, and in view of the transfer of responsibility of relevant functions, we would be grateful if you could please confirm the relevant contact(s) at the Department for Culture, Media and Sport with whom we should liaise in the first instance in relation to the ongoing public interest review of the Transaction. In particular, it is imperative that News receives a copy of the Report to afford it the adequate opportunity to make written and oral submissions to the Secretary of State for Culture, Olympics, Media and Sport before he exercises his judgment and makes a decision. In the absence of such an opportunity, News respectfully submits that its rights of defence and due process will have been infringed.

We therefore formally request you to confirm that the Department will ensure that:

- (a) a copy of the Report will be made available to News; and
- (b) News will be afforded the adequate opportunity to make written and oral submissions on it before the Secretary of State for Culture, Olympics, Media and Sport exercises his judgment and takes a decision.

Yours sincerely



John Pheasant
Partner

cc A. Bavasso, Allen & Overy LLP