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Mr Steve Unger
Ofcom
Riverside House
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By email

Dear Mr Unger

NEWS CORPORATION PROPOSED ACQUISITION OF BRITISH SKY BROADCASTING GROUP PLC - EUROPEAN COMMISSION CLEARANCE AND MEDIA PLURALITY REVIEW

As you will be aware, the European Commission adopted a first phase unconditional clearance decision under the EU Merger Regulation in respect of the Transaction on 21 December. A copy of the Commission's press release is enclosed with this letter for reference.

In its submission to Ofcom of 17 December in response to the Issues Letter ("Issues Response") News identified, in section 6, the implications of the European Commission's jurisdiction over the transaction for Ofcom's assessment of the sufficiency of plurality. In summary, and as set out in section 6 of the Issues Response: (a) the Secretary of State has no jurisdiction to apply a competition law test or to contradict the European Commission's findings in that respect; (b) the issues that Ofcom identified on its "forward view of the market" in the Issues Letter are irrelevant to the question of whether the transaction leads to insufficient plurality; (c) even taking its analysis at face value, Ofcom's theories of future harm are unsupported.

The European Commission's clearance decision confirms that the transaction would not significantly impede effective competition and would not have detrimental effects on competing newspaper publishers. This finding is highly relevant to the issues that Ofcom identified in its Issues Letter on its "forward view" of the market.

In particular, News would draw to Ofcom's attention the following findings of the European Commission (references relate to the pre-publication version of the decision which is confidential until published by the European Commission) (emphasis added):

- Para. 232: "*it appears that post transaction, **the merged entity would not have the ability to engage in a bundling strategy between its pay-TV and print newspapers that may foreclose its newspaper competitors***";
- Para. 231: readers choose a newspaper based on political stance, family heritage, socioeconomic factors, and type of content – price is not the most important factor. Moreover, "[t]*he Commission therefore also considers that creating a bundled subscription of BSkyB's pay-TV with News Corp's newspapers at an attractive price may not guarantee either that customers will switch in a significant manner away from their*

usual newspapers in order to start reading News Corp's newspapers, just because they are cheaper";

- Para. 236: *"[t]he market investigation also revealed that while some newspapers may have plans to potentially charge for (parts of) their news or for tablet applications, **it is unlikely that in the future, News Corp's newspaper competitors will no longer provide online versions of their titles free-of-charge.** In addition, **news aggregators such as Google News, Yahoo! News or The Huffington Post will continue to represent another free alternative to News Corp's online news websites.** Therefore, the Commission considers that even if the merged entity was to bundle its pay-TV subscriptions with subscriptions to News Corp's online news services, there would still remain a large number of free online news websites for readers to access and it is unlikely that they would stop consulting them*";

- Para. 237: "*[a]s a conclusion, it appears that post-transaction, the merged entity would not have the ability to engage in a bundling strategy between its pay-TV and online news websites that may foreclose its newspaper competitors*";

- Para. 255: the European Commission agrees that News Corp would not find a bundle of pay TV and news content (print, online, or otherwise) to be in News Corp's commercial interests);

- Para. 256: "*[i]t seems **unlikely that the merged entity would have the incentive to engage in a bundling strategy that may foreclose News Corp's competitors in the newspaper market in the near future.**"*

We trust that Ofcom will take due account of the European Commission's findings and analysis in preparing its own report and recommendations to the Secretary of State. These findings have the following implications:

- As regards the question of whether there is a real possibility of market exit as a result of the transaction, the matter falls properly within the competition jurisdiction of the European Commission. The European Commission has found that there is no possibility of market exit now or in the foreseeable future. There is, therefore, by definition no *quantitative* reduction in the number of third party media controllers as a result of the Transaction.

- The European Commission has furthermore rejected the suggestion that the Transaction could increase the strength of the merged group's proposition to customers to the detriment of other providers (e.g. through bundling). As News pointed out in paragraph 6.6 of its Issues Response, the European Commission's assessment of foreclosure involves a consideration of "whether competitors are disadvantaged and therefore able to compete less effectively". As a corollary, there can be no detrimental effect on the *qualitative* sufficiency of plurality on this basis.

If you have any further questions, please do not hesitate to contact John Pheasant, Paul Dacam or Suzanne Rab of this office and Antonio Bavasso or Cerry Darbon of Allen & Overy LLP. Please ensure all correspondence is marked for the attention of the same.

Yours sincerely

[redacted]

John Pheasant

cc A. Bavasso, Allen & Overy LLP