

3 February 2011

Jeff Palker  
General Counsel Europe & Asia  
News Corporation  
3 Thomas More Square  
London  
E98 1EX

STEVE UNGER  
Partner Strategy, Chief Economist  
and Technology


Dear Jeff,

**News Corporation/BSkyB merger UILs – request for information**

I am writing to request information in connection with Ofcom's assessment of the undertakings offered by News Corporation in lieu of a reference to the Competition Commission in respect of its proposed merger with British Sky Broadcasting plc ("BSkyB"). This request is made on an informal basis.


**Background**

On 27 January 2011, the Secretary of State asked the Office of Fair Trading ("the OFT") and Ofcom to advise him on the undertakings offered by News Corporation in lieu of a reference to the Competition Commission ("UILs") in relation to its proposed merger with BSkyB.

He asked the OFT under section 93 of the Enterprise Act 2002 for their views on the practical and financial viability of the proposals set out in the UILs, anticipating that the OFT might require Ofcom's assistance with this. The OFT has informed us that it does require assistance from Ofcom in light of its sectoral knowledge. He also asked Ofcom, in accordance with section 106B of the Act, for advice on the extent to which we think the UILs address the potential impact on media plurality identified in our report.

We are requesting information from you in order to inform this work.

**Information requested**

News Corporation is requested to provide Ofcom with the information specified in the annex. The specified information is requested to be provided in the manner and form specified, by sending it in electronic or hard copy format to Clive Carter or giving it to Clive Carter in person at: Ofcom, 2a Southwark Bridge Road, London, SE1 9HA. Please e-mail your response to  Please provide the information by **midday on Monday 7 February 2011**.

### Further information

If the questions we are asking do not capture any further information you consider of relevance to our work, please provide it.

### Confidentiality

In the response please indicate out in a separate annex marked "Confidential information" any document or information which you consider to contain confidential information and supply a written explanation as to why it should be treated as such. You should also supply an edited paper and/or electronic version of the document or information or answer.

It is for Ofcom to determine whether or not the information is to be disclosed in accordance with Part 9 of the Enterprise Act 2002. Information provided will be disclosed to the OFT should we consider it relevant to their work.

### Offences

I draw your attention to section 117 of the Enterprise Act 2002 (a copy of which is enclosed) which sets out the offences created by the Act in relation to the provision of false or misleading information to Ofcom in connection with its functions under Part 3 of the Act.

Yours sincerely,

A rectangular area of the document has been redacted with a thick, dark blue or black marker, obscuring the signature of Steve Unger.



**Steve Unger**

CC: *Andrea Appella, News Corporation*  
*Antonio Bavasso, Allen & Overy*  
*Sheldon Mills, Office of Fair Trading*



Annex: Information request – News Corporation

A. Financial independence of Newco

1. Please specify the basis upon which you intend to calculate the "market rate" that you propose to be charged for the following revenue or cost items, explaining the basis for calculation if the charge is proposed to either above market rate (in terms of revenues) or below market rate (in terms of costs)
  - a. Carriage deal with Sky
  - b. Carriage deals with third parties
  - c. Sky Brand licence fee costs
  - d. Costs associated with land and building lease
  - e. Facilities and support costs
  - f. Broadcast & creative costs
  - g. Technology costs
2. Please provide detail on the proposed contractual terms for the following main revenue and cost agreements, with particular reference to the points below
  - a. Carriage agreement
    - i. How has the subscriber fee been calculated? 
    - ii. To what extent would the carriage fee be affected by a fall in subscriber numbers? To what extent is the rise guaranteed as opposed to being dependant on specific market developments (e.g. rise in Sky HD subscribers)? Will there be a fixed fee component that would guarantee a minimum level of income, or some other form of minimum revenue guarantee?
    - iii. Would Newco be free to drop exclusivity on HD contractually? What would be the effect on total carriage revenue for Newco, under a non-exclusivity scenario, including possible other sources of revenue in your view e.g. third party carriage fees from other platforms?
    - iv. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered (e.g. new market / technical developments such as greater use of HD content on DTT, or 3DTV)?
  - b. Brand licensing agreement
    - i. How has the Brand licence fee of  been arrived at? How does this compare with similar market rates?
    - ii. What would be the rights and restrictions on the brand licensing agreement? Would it allow for example distribution of the Sky News channel on alternative platforms or to other platform operators internationally?
    - iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?

- c. Ad sales agreement
  - i. What are the underlying assumptions made on the growth of TV advertising underpinning the assumptions on Newco advertising revenues?
  - ii. What would be the costs associated with the provision of ad sales services by Sky to Newco?
  - iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?
- d. Other revenues
  - i. What are the underlying assumptions (including volume assumptions) used in calculating revenue from other platforms including mobile TV and tablets?
  - ii. Please provide details in relation to the terms of the existing Sky News syndication agreements (duration, end date(s), including optional end-dates/options to extend, revenues associated) and assumptions used in the forward projection of syndication revenues in your model
3. Please provide details of any other anticipated limitation on Newco's ability to diversify future revenue sources, including but not limited to:
  - a. limitations to new contracts of wholesale news provision by Newco to third parties
  - b. limitations on international distribution of Sky News channel
  - c. limitations to content syndication
  - d. any non-compete agreements
4. Please provide detail on the proposed terms for the following potential contracts between Newco and Sky:
  - a. Land and building lease (as identified in the UILs and in the slides sent to Ofcom on dated 2 February 2011)
  - b. Broadcast and creative services (as identified in slides to Ofcom)
  - c. Facilities and support costs ((as identified under the overall heading of overhead and corporate within slides to Ofcom)
  - d. Broadcast and technical services agreements (as identified in the UILs)
  - e. Production if there is any proposal for provision of services by Sky to Newco or use of Sky assets by Newco
5. Please provide a detailed breakdown of the anticipated technology and production costs items (identified in slide 13 of the slides sent to Ofcom) for Newco, by
  - a. Payments to Sky, indicating the specific cost items
  - b. Payments to 3<sup>rd</sup> parties, indicating the specific cost items
  - c. Internal Newco costs, indicating the specific cost items
6. Please provide details of platform access costs (for example, conditional access and EPG) for Newco access to Sky platform, and indicate which cost item they have been included in within the slides sent to Ofcom.
7. Please provide the specific assumptions in relation to the projected marketing costs (included in the slides to Ofcom under 'overhead / corporate' on slide 10). How is it proposed to market the Newco service, and who will undertake this activity? What proportion of the total costs for marketing the Newco service will be funded by Newco itself as opposed to Sky?



8. How far are Sky News and Sky Sports News integrated today, and what barriers may there be in separating these out? What arrangements are going to be put in place for the sharing of assets and resources between Newco and Sky Sports News operations? What assets and resources are likely to be covered by these arrangements?
9. What will be the arbitration process for resolving any contractual disputes, related for example to contract variations or renegotiations?

#### **B. Shareholding composition**

10. Following the proposed share transfer, what would the structure of Newco shareholdings be, based on the current Sky shareholding structure? Which organisations would hold more than 1% of Newco shares, and what would their shareholding be?

#### **C. Governance**

11. Who would Chair the Newco Board? Would it be an independent director?
12. What would be the process to ratify the independence of Newco non-executive directors?
13. Would the Newco editor be a member of the Newco Board?
14. Would the Newco Board put in place specific arrangements to assume overall responsibility and accountability on editorial policies and decisions?
15. What would be the practical arrangements for appointment and removal of the editor and other senior editorial roles of Newco, as well as creation of new senior editorial roles in Newco?