

**STRICTLY CONFIDENTIAL  
CONTAINS BUSINESS SECRETS**

**BY EMAIL ONLY**

11 February 2011

Steve Unger  
Ofcom  
2A Riverside House  
Southwark Bridge Road  
London SE1 9HA

Dear Steve

**News Corporation/BSkyB merger UILs**

I refer to your letter to News Corporation (News) of 9 February 2011 and to our meeting yesterday evening with Ed Richards, Polly Weitzman and you.

We appreciate that at the meeting it was recognised that News' proposed structural UIL "goes a long way forward" in addressing the concerns identified by the Ofcom Report and that you agreed that the UIL preserves Sky News as a "distinct media enterprise".

In its Report to the Secretary of State, Ofcom expressed the view that News' proposed acquisition of the remaining shares of Sky might have an impact on plurality because it would remove existing constraints which Ofcom considered were key to Sky's present day editorial independence from News: specifically, the existence of other shareholders and independent directors in Sky.

Accordingly, Ofcom's Report is based on the premise that the presence of independent shareholders and independent directors in Sky at the present time is sufficient to guarantee plurality and the preservation of Sky as an independent editorial voice in TV broadcast news.

News' proposed structural UIL would address Ofcom's concerns by creating a new and distinct media enterprise in the form of a publicly traded entity, whose corporate governance provisions would mirror those of Sky. Specifically, NewCo would continue to have shareholders and a majority of directors independent of News in the same way that Sky does today. The Transaction will therefore have no effect on the plurality of persons with control of media enterprises serving audiences in the UK.

In the letter of 9 February, you raised four main points, which you believe should be included in the UILs offered by News. These were re-iterated at the meeting of 10 February. While we continue to believe that the UIL is sufficient to address Ofcom's concerns, we are willing to submit a comprehensive proposal that should address the remaining issues raised by Ofcom which are relevant to plurality. We respond to each point in turn. As you know, we have been in touch with the OFT separately in relation to the clarifications that they have sought.

Unless expressly stated otherwise, defined terms in this letter have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**) and in its response to the OFT's questions of 7 February (the **Second OFT Response**).

*"1. The board of Newco to consist of a majority of independent directors. "Independent directors" being directors which have no other News Corporation or News Corporation associated interest"*

News has already offered a commitment in this respect. Please refer to paragraph 3.1(ii) of the proposed UIL, together with the explanation of "independent" supplied to the OFT in response to question 2.6 of the OFT's questions of 7 February 2011.

News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that a definition of an "independent director" would be enshrined in NewCo's constitutional documents, thereby eliminating its ability to not comply and disclose against the Code. The definition of "independent director" would exclude the circumstances and relationships set out in Provision B.1.1 of the UK Corporate Governance Code (the Code). Under that provision, a director is deemed not to be independent if the director:

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.



*"2. We would expect the board of Newco, including the independent non executive directors, to have a combination of both senior editorial and business experience/expertise"*

News considers that this should be a matter for NewCo to determine, although it would anticipate that the board of NewCo should have expertise in these areas. This concern is already addressed as a result of the commitment to adhere to obligations as regards compliance with the Code (Draft UIL, 3.1(iv)) which provides the following:

*"The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively." (Provision B.1)*

News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that this requirement will be enshrined in NewCo's constitutional documents and that at least one independent member of the NewCo board would have editorial and/or journalistic experience.

*"3. The Chairman of Newco be an independent non executive"*

As indicated in the original UIL proposal to the Secretary of State and in subsequent correspondence with Ofcom (and the OFT), the proposed UIL replicates, in relation to NewCo, News' current position *vis a vis* Sky. On that basis, the proposed UILs maintain Sky's status quo in relation to the governance of NewCo.

As we noted in News' response to question 11 of Ofcom 7 February RFI, the decision as to who should be the chairman of the board of NewCo will rest with the board of NewCo, which should have the freedom to decide the best candidate in the interest of the business. News is prepared to commit that the independent directors will be the majority of the board of NewCo (see question 1 above). Therefore, News sees no need to offer an additional undertaking in relation to the chairman of NewCo.

Nor does News understand how such an undertaking could be necessary to address Ofcom's potential plurality concerns. There is nothing in Ofcom's Report to the Secretary of State suggesting that Sky's current degree of editorial independence was in any way linked to its non-executive chairman being independent. Indeed there could not be such a link because Sky's current chairman is not independent and, since its listing in 1994, Sky has never had a chairman who was not affiliated with one of its major shareholders.

Under provision A.3.1 the Code states *"The chairman is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The chairman should also promote a culture of openness and debate by facilitating the effective contribution of nonexecutive directors in particular and ensuring constructive relations between executive and non-executive directors. The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders."*

Ofcom recognised at the 10 February meeting that the requirement for an independent Chairman is a new point not covered by the Report. It is still not clear to News why this function is relevant to address a potential plurality concern in the context of the Secretary of State's consideration of the UIL.

Therefore, we continue to see no basis upon which the Secretary of State can reasonably expect that an undertaking in this respect is needed or justified in the present case.

*"4. The creation of a sub-committee of the board of Newco to deal with editorial matters ("the Board Editorial Committee"):*

- i) Members of the Board Editorial Committee to contain a majority of independent non executive board members, one of whom is the Chair of the Board Editorial Committee. We would expect the Chair to have senior editorial experience and expertise.*
- ii) We would expect the terms of reference for the Board Editorial Committee to include:*
  - the editorial independence and integrity of Sky News*
  - the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal)*
  - any changes to the authority, reporting relationship and consultation rights of the Sky News Editor."*

News has explained to Ofcom that it does not consider that this should be necessary. Please refer to News' response to question 14 of Ofcom's questions of 3 February 2011.

Given that the majority of NewCo's board members will be independent in any event (as per response to point 1 above), News does not understand the purpose of a Board Editorial Committee which would also comprise a majority of independent board members (as envisaged by Ofcom in question 4(i)). This would not only be unnecessary but also redundant, particularly in the context of a company that is focussed specifically on news provision. The functions envisaged by question 4(ii) would also be carried out under the supervision of the NewCo's board.

Without prejudice to this view, News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that:

- NewCo's constitutional documents will explicitly provide that Sky News TV service will abide by the principle of editorial independence and integrity in news reporting and that it will comply with the Broadcasting Code.
- The hiring and firing of the head of Sky News (i.e. the most senior editorial position of Sky News) would have to be approved by NewCo's board which comprises a majority of independent directors.
- NewCo will establish a Corporate Governance and Nominations Committee that:
  - would operate under terms of reference substantially similar to those of Sky's current Corporate Governance and Nominations Committee;
  - would comprise a majority of independent members (including the independent board member with editorial and/or journalistic experience);

# News Corporation

- would be chaired by an independent board member;
- would specifically be entrusted with oversight of compliance with both NewCo's corporate governance provisions (as provided for under the UIL) and NewCo's constitutional provisions relating to the principle of editorial independence and integrity in news reporting, and compliance with the Broadcasting Code.

We trust that, in light of these clarifications and further undertakings, which address points that (as agreed by Ofcom at the meeting on 10 February) go beyond its own Report and which go beyond the corporate governance provisions currently in place at Sky, Ofcom would be able to advise the Secretary of State that he should accept the proposed UILs.

Yours sincerely



Jeffrey Palker  
General Counsel, Europe & Asia  
News Corporation