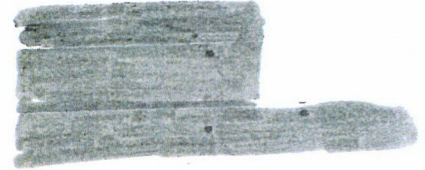


Antonio Bavasso  
Allen & Overy LLP

Cc Steve Unger, Ofcom  
Cc Andrea Appella, NewsCorp

Your ref 0012561-0000367  
Our ref  
Date 21 February 2011

Direct line  
Fax  
Email



Dear Antonio

News / BskyB

As you will know, the Secretary of State has written to us by letter of 17 February requesting further advice from us on a set of undertakings in lieu (UILs) to enable him to decide whether or not he should be minded to accept them and launch a public consultation. The Secretary of State has asked us to provide this advice within a very short timeframe (by this Thursday).

We have seen a copy of the letter sent by James Murdoch to the Secretary of State in which he agrees, on behalf of News Corporation, to agree to the recommendations set out in our Report of 11 February 2011 and Ofcom's report. We also have a revised set of draft UILs which you submitted to the Secretary of State on 16 February. We have now considered the revised set of UILs to assess whether they will lead to solution which is practically and financially viable and whether there are any practical issues which could undermine the operation of the UILs and whether they would be effective over the medium to long term (please see paragraph 1.3 of our report for our original set of instructions).

We note that Ofcom has advised that the UILs would, subject to a number of issues relating principally to the governance of Newco, be effective in meeting the media plurality concerns addressed in their report of 31 December 2010. As you know, it is not our role to advise on effectiveness and we therefore restrict our questions and our further advice



to the Secretary of State to issues of practical and financial viability as noted in paragraph 1.3 of our report.

In that light, we have the following questions in relation to the revised draft UILs. Given the short timeframe in which we need to respond to the Secretary of State, I would be grateful if you could respond to our requests by 6 pm tomorrow (22 February 2011).

I would also note that we have limited our comments to those provisions which are most relevant to our assessment of the UILs at this stage. If there is a further round of negotiation or if a public consultation is launched, you will note that there are several risks identified in our report (even as they relate to the short to medium term) which may still need to be addressed through the specific details of the carriage agreement, brand licensing agreement or other aspects of the operational agreements.

Yours sincerely,

A solid black rectangular redaction box covering the signature of Sheldon Mills.

Sheldon Mills  
Director, Mergers Group, OFT



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**PROPOSED ACQUISITION BY NEWS CORP OF BSKYB**

**QUESTIONS RE REVISED UNDERTAKINGS IN LIEU PROPOSAL**

**21 FEBRUARY 2011**

**Introduction**

The OFT sets out below questions it has in relation to the revised undertakings in lieu offered by News Corporation (News) on 16 February 2011 in relation to its proposed acquisition of the remaining shares in BSkyB Group plc (Sky) (the UIL).

These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 as to whether the UIL would be practically and financially viable.

The OFT requests a response to these questions by 6 pm on 22 February 2011.

**Corporate governance**

1. Please explain why the word 'substantially' has been added in paragraph 3.1(i) of the revised UIL.

**Transfer of assets**

2. Please explain how in the revised UIL News proposes to incorporate its willingness to provide a detailed schedule of assets to be provided to Newco (as indicated in News' letter to the Secretary of State of 16 February 2011).

**Non-solicitation of staff**

3. The OFT is concerned about the length of the non-solicitation clause. Would News be prepared to extend the period in paragraph 4.2 of the revised UIL to 24 months?

**Carriage agreement and brand licensing agreement**

4. The current drafting of paragraphs 4.5 and 4.7 of the UIL might suggest that the Secretary of State's review of the carriage agreement and brand licensing agreement should be limited only to

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satisfaction of the criteria enumerated in paragraphs 4.5 and 4.7. Please confirm that News would be willing to amend the opening sentences of paragraph 4.5 and 4.7 of the revised UIL from 'News shall be deemed to have complied with the obligation in section [4.4/4.6] above so long as Sky has entered into a [Carriage Agreement/Brand Licensing Agreement] with Newco which ...' to 'Any [Carriage Agreement/Brand Licensing Agreement] approved by the Secretary of State for the purpose of the obligation in paragraph [4.4/4.6] above] shall ...'.

5. Please confirm that News would be prepared to amend paragraph 4.8 of the revised UIL to read ' News shall also ensure that neither the Carriage Agreement nor the Brand Licensing Agreement can be terminated by Sky until any dispute between News and Sky as to the validity of that proposed termination ...'.

**Dispute resolution mechanism**

6. The OFT notes that no details are provided of the basis of the dispute resolution mechanism contemplated in paragraph 4.5(v) of the revised UIL. The OFT queries whether it is appropriate to omit such detail from the terms of the UIL given its potential importance. Please provide details of how News would envisage the dispute resolution mechanism functioning in relation to:
  - (a) the principles / terms of the resolution procedure;
  - (b) the body / individual responsible for resolution;
  - (c) whether regard would be had to the purpose of the UIL and the Secretary of State's decision in resolving a dispute;
  - (d) how the costs of such a mechanism would be allocated; and
  - (e) what the appeal rights would be in relation to such a mechanism.

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**Operational agreements**

7. Do the categories of operational agreements listed at 5.1 of the draft UIL include all those required from Sky by Newco to operate its core business from the date of spin-off?
8. Please list in full the facilities and services covered by the operational agreements in 5.1 of the UIL (as discussed at the third bullet of paragraph 11.10 of the OFT report).
9. Please identify any of the operational agreements (or components of these agreements) where terms of provision by News/Sky is of key importance to Newco's business ('key agreements'), as discussed at paragraph 10.9 of the OFT's report to the Secretary of State. Please confirm whether News would be prepared to have such agreements subject to oversight and approval by the Secretary of State prior to acceptance of the undertakings in lieu (as for the carriage agreement and brand licensing agreement) (as indicated in News' letter to the Secretary of State of 16 February 2011).
10. Please confirm that the obligation on News/Sky to enter operational agreements under 5.1 of the UIL will apply at the point of spin-off (as discussed at the first bullet of paragraph 11.10 of the OFT report). Please confirm what is meant by 'if required by Newco' in paragraph 5.1 of the UIL (given that, immediately prior to the time of the spin-off, Newco will not be an independent entity and will therefore not be able to determine whether such agreements are 'required').
11. Is News prepared to address in the UIL inclusion of Newco termination rights in the operational agreements, and absence of termination rights for News/Sky (subject to events outside News'/Sky's control) (as discussed at the fourth bullet of paragraph 11.10 of the OFT report)? Is the first part of this what is meant by '(or such shorter time as required by Newco)' in paragraphs 5.1(i), and (ii) of the UIL? If so, the OFT considers this should be spelt out with greater clarity.

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12. Please confirm the intention of clause 5.2(a) of the UIL: would this term be included in the contract from the outset? Which of the contracts may it apply to?

**Interim action**

13. Please confirm whether News would be prepared to agree the following changes to paragraph 8.1 of the UIL:
- (a) 8.1 (iii) to become 'the Sky News business is maintained and preserved and is run in the ordinary course'; and
  - (b) 8.1 (iv) to become 'the nature, description, range and standard of news gathering ...'.

**Removal or variation**

14. Please explain why News believes this provision is required given that the Enterprise Act 2002 already provides a scheme for variation of UIL in the event of a change of circumstances.

**Definition of material transaction**

15. Please explain how the definition of 'Material Transaction' has been derived and why differential treatment has been given to transactions with values of £12.5 million.

OFT

21 February 2011