

Smith, Christine:CO (LN)

From: Long, Dominic:CO (LN)
Sent: 24 February 2011 19:45
To: 'Sheldon.Mills'; [REDACTED] 'Steve Unger'
Cc: 'Nicholas Scola'; 'jeff.palker'; [REDACTED] 'Appella, Andrea'; Darbon, Cerry:CO (LN); Bavasso, Antonio:CO (LN)
Subject: RE: News/BSkyB - revised UiLs (0012561-0000367)
Categories: Copied to Virtual File
Attachments: CO-#13520699-v3-Third_Revised_Draft_UiL.pdf
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Sheldon, Steve,

As discussed with the OFT, I enclose a clean version of the Third Revised Draft UiL with the following changes:

- Para 2.2(iv): "4.3, 4.5" changed to "4.4, 4.6";
- Para 3.1(viii)(D)(IV): "cause for a statement" changed to "cause a statement";
- Para 5.1(iv): "relating to the services set out at (A), (B) and (C)..."
- Para 5.3: (a) and (b) changed to (i) and (ii) and colon included at the end of the first paragraph;
- Para 5.3[old](a): "NewCo" changed to "**Newco**" and "**and**" included at the end of the paragraph;
- Para 6.1: "News shall not, for a period of 10 years from the Effective Date, except with the prior written consent of the Secretary of State, acquire shares in Newco that will result in News in **combination with any member of the same Group of Interconnected Bodies Corporate as News** holding more than 39.14% of the shares in Newco."
- Para 7.1(ii): "they" changed to "**it**";
- Para 9.1: "News shall furnish promptly to the Secretary of State **or the OFT** such information as the Secretary of State **or the OFT** considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.";
- Definitions: "the" removed in definitions of "Act" and "Order"; and
- Definition of "**Interest**" added: "includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right".

Kind regards

Dominic

From: Bavasso, Antonio:CO (LN)
Sent: 24 February 2011 15:55
To: Steve Unger
Cc: Sheldon.Mills; [REDACTED] Nicholas Scola; jeff.palker; [REDACTED]; 'Appella, Andrea'; Darbon, Cerry:CO (LN); Long, Dominic:CO (LN)
Subject: News/BSkyB - revised UiLs (0012561-0000367)

15/03/2012

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Dear Steve

following your conversations with Jeff during the course of today I enclose News' response to your email of last night together with a revised set of Draft UILs, both in mark up against the Second Revised Draft UIL and in clean. Many thanks.

Best wishes,

A.

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From: Steve Unger [REDACTED]
Sent: Wednesday, February 23, 2011 9:20 PM
To: jeff.palker [REDACTED]
Cc: Bavasso, Antonio:CO (LN); Sheldon.Mills:[REDACTED]; Steve Unger
Subject: Follow-up from this afternoon's call

Dear Jeff

Thank you for your time today and hopefully we are progressing towards agreement.

As we discussed earlier today, there are still some differences between us. I understand that the OFT is coming back to you on the issues discussed on our later call. This email follows on from our earlier discussion in respect of the establishment of an editorial committee of the Newco Board.

We proposed that in order to meet our concerns on plurality there should be a transparent mechanism in place to ensure that the editorial integrity and independence of Sky News is at the heart of Newco's Board's interests. We proposed that an editorial committee of the Board should be established with a majority of independent non executive directors, one of whom is the Chairman of the Board Editorial Committee. We expected the Chairman to have senior editorial experience and expertise. We also indicated what we would expect to be included in the terms of reference for the Board Editorial Committee.

Your counter proposal was for a Governance and Nominations Committee to be established that would:

- (a) comprise a majority of members who are Independent Directors (including an Independent Director with editorial and/or journalistic experience);
- (b) be chaired by an Independent Director;

- (c) be entrusted with oversight of Newco's compliance with both the corporate governance provisions and the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code

You previously indicated that the Governance and Nominations Committee would operate under substantially similar terms to those of Sky's current Corporate Governance and Nominations Committee, but we note in your latest UILs you propose that the Newco Board should determine these.

As outlined earlier today, as your proposal is for a general purpose governance committee, and not an editorial committee, we do require further reassurance from you before we can be confident that it would achieve the effect of the editorial committee which we had proposed. By way of example of our concerns, there is a real possibility that the editorial responsibilities of the committee would be diluted by its other functions to such an extent that it would not be effective. As a further example, we understand that a general purpose governance committee would not normally be expected to meet as frequently as the type of editorial committee we had envisaged. For this reason, we outline below what types of measures would give us confidence that your proposed Governance and Nominations Committee would achieve substantially what we envisaged being addressed by an editorial committee.

We would expect the UILs to state that the Secretary of State should approve the terms of reference for the committee. We would also expect Clause 3.1(viii) of the UILs to indicate the key principles of the terms of reference. We would expect the terms of reference to include, for example:

- the editorial function reflected in the name of the committee
- at least one member with senior editorial/journalistic experience
- a majority of independent non-executive directors
- a clear reference to the principles of editorial independence and integrity (which are also contained in the company's constitutional documents)
- a chairman who is the independent director with editorial/journalistic experience
- a clear responsibility to report regularly to the Board on editorial matters
- an explicit process for the Head of Sky News to report on editorial independence and integrity, as a route to reporting to the Board
- a role in advising the Board on all editorial issues, including advice on decisions relating to the hiring, firing, authority and reporting relationship of the Head of Sky News
- frequency of meetings (e.g. at least once per quarter)
- appropriate resource and powers to investigate all matters relevant to editorial independence and integrity within its remit
- a statement in Newco's annual report on its activities

We note that you have already confirmed some of these would be provided by the Governance and Nominations Committee and that others are included in the current terms of reference for Sky's Governance and Nominations Committee. We would like to see all of the above reflected in the terms of reference for Newco's Governance and Nominations Committee. Could you please consider whether you are prepared to agree and include in the next consolidated amended UILs? Where this is not possible, could you please provide an explanation of the substantive concern that prevents you from doing so?

I'd be very happy to talk to you about this further tomorrow morning.

Best wishes

Steve

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PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF BRITISH SKY BROADCASTING GROUP PLC

UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO PARAGRAPH 3 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

WHEREAS:

- (a) News Corporation proposes to acquire the shares in British Sky Broadcasting Group plc that it does not already own.
- (b) On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 31 December 2010, Ofcom provided its report to the Secretary of State on issues of media plurality (as provided for in Article 4A of the Order) and on 30 December 2010 the OFT provided its report to the Secretary of State on the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.
- (d) The Secretary of State considers that the conditions for referring the Transaction to the CC under Article 5 of the Order are met and, absent any offer of undertakings from News, he would be minded to refer the Transaction to the CC.
- (e) The Secretary of State has a discretion to accept undertakings in lieu of reference from News under paragraph 3 of Schedule 2 of the Order:

"The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate."

- (f) The Secretary of State considers that the undertakings given below by News are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

NOW THEREFORE News hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be

REDACTED

Comprising 10 pages