

BY COURIER ONLY

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Dear Victoria,

News Corporation - British Sky Broadcasting Group Plc

Please find attached draft undertakings reflecting and expanding on News' initial UIL Proposal as mentioned in my letter sent by e-mail earlier today.

I also, for completeness, enclose a hard copy of my earlier letter.

Yours sincerely



Antonio Bavasso
Partner

cc: Jeff Palker and Andrea Appella - News Corporation; John Pheasant and Suzanne Rab - Hogan Lovells International LLP; Cery Darbon and Dominic Long - Allen & Overy LLP

Enc.

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 expected to result from the Transaction.

1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by News, they are accepted by the Secretary of State.

2. SPIN-OFF OF SKY NEWS BUSINESS

- 2.1 News shall effect the spin-off of the Sky News business into an independent English public limited company, Newco, the shares of which will be publicly traded, using its best endeavours and acting in good faith, at the Closing Date or as soon as reasonably practicable following the Closing Date and

in any event within 9 months of the Closing Date, subject to any extension of time agreed with the consent of the Secretary of State. Shares in Newco will be distributed to the shareholders of Sky in the same proportions as their shareholdings in Sky.

- 2.2 News will take (or procure the taking of) the following steps to achieve the spin-off of Newco to the shareholders of Sky:
- (i) the formation of Newco as a new public limited company incorporated under the laws of England and Wales as a Subsidiary of Sky;
 - (ii) the spin-off of shares in Newco to shareholders of Sky in the same proportions as their shareholdings in Sky under arrangements that cause the resulting News shareholding in Newco on completion of the spin-off to be 39.1%, equal to its current shareholding in Sky;
 - (iii) the putting in place of arrangements for the public trading of Newco shares;
 - (iv) the establishment of the corporate governance arrangements set out in section 3 below;
 - (v) the transfer of the business of Sky News (as set out in section 4 below) into Newco in exchange for shares in Newco; and
 - (vi) the entering into of the agreements between Sky and Newco set out in sections 4.3, 4.5 and section 5 below.

3. CORPORATE GOVERNANCE OF NEWCO

- 3.1 News shall ensure that the corporate governance structure of Newco shall be established to substantially replicate the effects of the existing corporate governance structure of Sky. In particular:
- (i) News shall be subject to a voting limitation of 37.19% of the total votes of Newco on the same terms as currently apply in relation to Sky;
 - (ii) a majority of the board of Newco shall comprise non-executive directors determined by that board to be independent;
 - (iii) material transactions between Newco and News or Sky shall require the approval of Newco's audit committee, which shall consist exclusively of independent non-executive directors. In addition Newco's constitutional documents shall provide that such transactions may, depending on materiality, require an independent fairness opinion or Newco independent shareholder approval (by virtue of Newco applying controls that have equivalent effect to those imposed by Chapter 11 of the Listing Rules); and
 - (iv) Newco shall also adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in Section 1 of the UK Corporate Governance Code.

4. SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO

- 4.1 News will cause the Sky News business to be transferred, as a going concern, to Newco. This will require the transferring or making available of those assets required to conduct the Sky News business, including:
- (i) all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News' business. Arrangements will also be made for Newco to have the use of assets

which are not used exclusively in the Sky News business on normal market terms if so requested by Newco;

- (ii) all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff, production, online and multimedia staff and Sky News international staff; and
 - (iii) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of the Sky News business (and, to the extent that such licences, permits, consents or authorisations are not capable of transfer, News will endeavour to assist Newco in applying for new licences, permits, consents or authorisations).
- 4.2 Without prejudice to the generality of 4.1, and subject to obtaining the necessary third party consents, News will also use all reasonable endeavours to procure that there shall be transferred or made available to Newco:
- (i) the benefit and burden of any carriage agreements between Sky and third parties (including with Virgin Media and UPC) for the distribution of the Sky News TV channel. News will use all reasonable efforts to ensure that these agreements are transferred directly to Newco;
 - (ii) Arqiva capacity for one standard definition channel until the expiry of Sky's existing capacity agreement with Arqiva in respect of the broadcast of Sky News on Freeview;
 - (iii) the benefit and burden of wholesale contracts entered into by Sky for the supply of news content to Channel 5 and IRN; and
 - (iv) the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering.
- 4.3 In addition News will ensure that Sky enters into a **Carriage Agreement** with Newco under which Sky News channels and services will be provided to Sky on a wholesale basis for distribution by Sky to viewers or subscribers in return for the payment of a carriage fee by Sky to Newco in a form to be approved by the Secretary of State prior to the Effective Date.
- 4.4 News will be deemed to have complied with the obligation at 4.3 so long as Sky has entered into a Carriage Agreement with Newco which:
- (i) is for a term of 10 years;
 - (ii) does not provide Sky (or News) with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco;
 - (iii) is terminable by Sky only in the event of material breach that has not been cured or in the event that Newco ceases to provide output which is branded "Sky News"; and
 - (iv) (subject to EPG regulation and any FRND changes to Sky's EPG listing policy) obliges News to use its best endeavours to ensure that Newco is provided with an EPG slot which is no worse than Sky News' current EPG slot.
- 4.5 News will ensure that Sky will enter into a royalty-bearing **Brand Licensing Agreement** with Newco, under which Newco will receive a licence of the Sky News brand for an initial 7 year term,

with an automatic renewal for a further 7 years, and which may then be extended at the option of Newco for a further 3 years.

- 4.6 News will be deemed to have complied with the obligation at 4.5 so long as the Brand Licensing Agreement entered into between Sky and Newco:
- (i) permits Newco to use the Sky News brand in connection with its news output;
 - (ii) does not provide Sky or News with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco; and
 - (iii) is terminable by Sky only in the event of a material breach that has not been cured and/or in the event of a change in Control of Newco.

5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

- 5.1 News will ensure that Sky will, if required by Newco, enter into the agreements listed below with Newco under which Sky will provide facilities and support services to Newco, on arms'-length terms, including:
- (i) an advertising sales agreement between Newco and Sky under which Sky will sell advertising and sponsorship on behalf of Newco for a term of up to 3 years (or such shorter time as required by Newco);
 - (ii) a lease of land and buildings under which Sky will agree to lease the existing Sky News land and buildings to Newco for a period of up to 15 years (or such shorter time as required by Newco);
 - (iii) a site support services agreement under which Sky will agree to provide certain support services to Newco while Newco leases premises from Sky including IT support services for a term comparable with the term of the lease; and
 - (iv) a broadcast and technical services agreement under which Sky will offer satellite capacity, playout and uplink, DTT transmission, online transmission and mobile distribution to Newco for a term of up to 10 years (or such shorter time as required by Newco).

6. COMPLIANCE

- 6.1 News shall comply promptly with such written directions as the Secretary of State may from time to time give:
- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (ii) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 6.2 News shall procure that any member of the same Group of Interconnected Bodies Corporate as News complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as News shall be attributed to News for the purposes of these undertakings.

- 6.3 Where any Affiliate of News is not a member of the same Group of Interconnected Bodies Corporate as News, News shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them. Post the Closing Date, Sky shall be treated as an Affiliate of News for the purposes of this paragraph.

7. PROVISION OF INFORMATION

- 7.1 News shall furnish promptly to the Secretary of State such information as the Secretary of State 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.

8. INTERPRETATION

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 8.4 For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Brand Licensing Agreement" has the meaning set out in 4.5 above;

"business" has the meaning given by section 129(1) and (3) of the Act;

"Carriage Agreement" has the meaning set out in 4.3 above;

"CC" means the Competition Commission;

"Closing Date" means the date on which News acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 40 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 40 per cent or more of the total number of votes which may be cast at such meetings;

"Effective Date" means the date that, having been signed by News, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

"EPG" means Electronic Programme Guide;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Key Sky News Editorial Staff" means the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News;

"Newco" means the public limited company into which the business of Sky News will be transferred and which will continue to operate that business, as described at 2.1 above;

"News" means News Corporation;

"OFT" means the Office of Fair Trading;

"the Order" means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;

"Secretary of State" means Secretary of State for Culture, Olympics, Media and Sport (except as context otherwise requires);

"Sky" means British Sky Broadcasting Group plc;

"Sky News" means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels currently branded "Sky News" and "Sky News HD" and related services under the Sky News brand and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, "Sky Sports News" is a separate business which will remain under the sole control of Sky;

"Subsidiary" shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated; and

"Transaction" means the proposed acquisition by News of some or all of those shares in Sky that it does not already own.