

<p>1 Friday, 25 May 2012 2 (9.30 am) 3 LORD JUSTICE LEVESON: Good morning. 4 Just before we start, Mr Jay, as we are looking at 5 the BSkyB bid, could you help me: although I feel that 6 I have a fairly good understanding of what 7 a quasi-judicial process looks like, could you just 8 focus my attention on the test -- I think it's contained 9 within the Enterprise Act -- that the Secretary of State 10 responsible for making the decision would have to 11 consider? 12 MR JAY: Yes. Sir, the relevant time in relation to DCMS, 13 we're considering the possibility of a referral to the 14 Competition Commission. The position is different in 15 relation to BIS at the anterior stage. 16 But at Mr Hunt's stage, as it were, he has 17 a discretion whether or not to refer, if in his 18 reasonable opinion, a relevant public interest 19 consideration arises, and the relevant public interest 20 consideration for the purposes of this case is that 21 specified under section 58(2)(b) of the Enterprise Act 22 2002 as amended, at least it's the primary one, and that 23 relates to: 24 "The need for the extent that it's reasonable and 25 practicable as sufficient plurality of use in newspapers Page 1</p>	<p>1 A. Yes, I do. 2 Q. The other projects, of course, are general policy 3 projects and so you regarded this in exactly the same 4 light; is that correct? 5 A. That's correct. 6 Q. In terms of your formal -- or the formal meetings within 7 the department where the bid was considered, you 8 itemised those at paragraph 8 of your statement at 9 09040. 10 I don't think it's necessary to deal with those 11 matters, but these are interdepartmental meetings where 12 the bid, as one might expect, is discussed generally, 13 legal advice is taken, and detailed consideration is 14 given to the merits of the issue in terms of the 15 statutory test I have just itemised; is that correct? 16 A. It is, and I think it also includes the meetings that 17 Mr Hunt had with News Corporation as well. 18 Q. Thank you. Those two meetings were on 6 and 20 January 19 2011 and they are well minuted. 20 A. Yes. 21 Q. Paragraph 49 of your statement, 09042, you refer to more 22 informal contacts, and you refer to the relevant 23 officials and, of course, to the relevant lawyers. You 24 say: 25 "For example, they would come to my office to let me Page 3</p>
<p>1 in each markets, the newspapers in the United Kingdom 2 part of the United Kingdom is specified in this 3 section." 4 So that is the sole issue which the Secretary of 5 State is bound by statute to consider for this purpose. 6 As for quasi-judicial, I'm not going to say any more 7 about that save to mention the relevant appearance of 8 bias cases arising under common law in article 63 of the 9 convention which is all very well known. 10 LORD JUSTICE LEVESON: Yes, well, I'm familiar with those, 11 but I must confess that that particular provision of the 12 Enterprise Act had -- I don't say escaped my attention; 13 not previously been brought to my attention, in 14 a different context that is. Right. 15 MR ADAM SMITH (continued) 16 Questions by MR JAY (continued) 17 MR JAY: Mr Smith, I think we'd reached section 46 of your 18 statement last night and you'd explained it hadn't been 19 explained to you how the quasi-judicial capacity issue 20 might impact upon your contact with News Corp, and 21 paragraph 51 of your statement, so we're clear about it, 22 also makes it clear that as you hadn't received any 23 specific instruction. You approached the matter in the 24 same way that you did in other projects with which you'd 25 been involved. Do you see that? Page 2</p>	<p>1 know about how matters were progressing. They would 2 also ask me if I could assist in resolving any sticky 3 points." 4 They would also seek your advice on non-legal 5 issues, which you would describe as presentational 6 advice. It's the last sentence: you would advise them 7 of News Corp's positions on the issues, which you would 8 have learnt from the contact you received from 9 Mr Michel. Would or did they know that News Corp's 10 position was derived from your contact with Mr Michel or 11 not? 12 A. Well, I believe so, because I would have said, "I have 13 heard from News Corp that ..." or, "Fred has told me 14 that they think this". 15 For instance, when News Corp were pushing for the 16 Ofcom report not to be published, I mentioned that that 17 was what they were pushing for, but obviously we'd 18 already said that we were going to publish it. 19 Q. So the department knew that you were in contact with 20 News Corp, and the department knew that your point of 21 contact was Mr Michel. Was it as simple as that? 22 A. Yes. Yes. 23 Q. Out of interest, were you in contact with anybody else 24 at News Corp? 25 A. I wasn't, no. Page 4</p>

<p>1 Q. So was Mr Michel's first or last name mentioned in this 2 specific context as being the person with whom you had 3 been speaking? 4 A. Oh yes, yes. 5 Q. In terms of the layout of the office, we heard some 6 mention of that yesterday. When you were speaking to 7 Mr Michel on the phone, was it always on your mobile 8 phone or was it sometimes on the office landline, as it 9 were? 10 A. I'm pretty certain it was nearly always on the mobile 11 phone. I mean, there may have been a handful of phone 12 calls, I can't quite remember, but certainly sort of 13 95 per cent at least would have been on the mobile. 14 Q. The data I provided yesterday, the number of text 15 messages and calls, they were all derived from what your 16 mobile and Mr Michel's mobile provide to us. There's no 17 evidence of anything else in relation to a landline, but 18 I suppose that would be theoretically possible to 19 ascertain, but it seems no point, in the light of what 20 you've just told us. Would officials have been able to 21 overhear your conversations? How might it have 22 proceeded? 23 A. That would have been unlikely, just because they 24 wouldn't have been in the office. The special advisers' 25 office was myself, the other special adviser and our Page 5</p>	<p>1 contact." 2 So are you adhering to the word "believe" or not? 3 A. I think in certain individual circumstances I know that 4 they know I was, because some officials asked me to 5 speak to him about certain issues or said, "Have you 6 heard from Fred about ..." 7 I think that particular example was about the 8 redactions of some documents. So -- and I would have, 9 like I say, sort of in discussion, mentioned it, so I am 10 pretty certain that they knew. In fact, I am certain in 11 some cases. 12 Q. Indeed, there are documents which we're going to come to 13 fairly soon which tie in with what you've just said. 14 LORD JUSTICE LEVESON: What you're saying is that, in 15 relation to the generality, namely that you spoke to 16 Mr Michel, there was awareness but you can't say in 17 relation to any specific detail; is that the position? 18 A. I can say in a couple of circumstances where I know, 19 which I think I can either talk about now or if, Mr Jay, 20 you wanted to -- 21 LORD JUSTICE LEVESON: Mr Jay will come to it. 22 A. I suppose what I would say is that they generally knew 23 I was in touch. On some certain issues they certainly 24 knew, but I don't think they knew the volume or extent. 25 MR JAY: Thank you. The general point is made again in Page 7</p>
<p>1 private secretary, so it would have been -- I can't 2 think of a single occasion when they would have 3 overheard me speaking to Mr Michel, no. 4 Q. No. You mention Mr Michel's name in the context of 5 discussions with departmental officials. What about 6 discussions with Mr Hunt, if there were any? Did you 7 mention his name in that context as well or not? 8 A. I can't remember whether I specifically did but I would 9 have thought, on the odd occasion that I did mention to 10 Mr Hunt, on one of the issues that I thought was worthy 11 of his attention, I would, I think, almost certainly 12 have said, "Fred's told me X, Y or Z." 13 Q. Did he know that you were in contact with Mr Michel or 14 not? 15 A. Did Mr Hunt? 16 Q. Yes. 17 A. I believe so. 18 Q. Well, "I believe so"; do you know or not? 19 A. I think he did, yes. I mean, I would have mentioned it, 20 so -- 21 Q. You say in paragraph 50 -- again, you use the word 22 "believe" in the third line: 23 "I believe that Mr Hunt [and then others] were all 24 generally aware of my activities from a combination of 25 the discussions at our meetings and our more informal Page 6</p>	<p>1 paragraph 51, isn't it, Mr Smith, about what the general 2 understanding was and indeed what your style and 3 approach was? Can I ask you, please, about the first 4 sentence of paragraph 52, though? You say you received 5 no specific instructions as to whether or not there were 6 any limits to the type of information which you could 7 provide. Are you intending to state there or imply that 8 there were, in fact, no limits to the type of 9 information you could provide, or if there were such 10 limitation, what were they? 11 A. I wasn't necessarily aware of any particular limits 12 other than -- and I think when we come on to some of the 13 emails, obviously, a lot of what I said to Mr Michel, he 14 had already been told at official meetings or through 15 correspondence, so it was sort of reconfirming what they 16 had already been told, and I suppose I took my sort of 17 lead from that, really. 18 Q. What about wider considerations of confidentiality? Did 19 you feel constrained by those? 20 A. Yes, I would use my judgment on those particular issues, 21 but as I, sort of, detail in my statement previously, it 22 wasn't uncommon to give advance notice of certain 23 statements, but I would use my judgment on what to say 24 and what not to say, yes. 25 Q. Certainly. Your statement makes it clear later on that Page 8</p>

<p>1 you felt at one point, or maybe at more than one point, 2 you were being bombarded by information from Mr Michel. 3 Is that correct? 4 A. Yes. He sent me quite a substantial amount of 5 correspondence that was going on between News 6 Corporation and Ofcom and the OFT and obviously he was 7 in touch a lot. 8 Q. So you felt that you were more the recipient of 9 information than the provider of it; is that correct? 10 A. Yes. 11 Q. But did you not feel that here was a -- I can put it in 12 these terms -- skilled public relations operator, as it 13 were, that he would want to try and extract information 14 from you? 15 A. I'm sure that's what he was trying to do, yes. 16 Q. Were you aware of that at the time? 17 A. Yes. 18 Q. Because, in truth, he would be more interested to find 19 out what you were thinking, your department was 20 thinking, really, than providing information to you, 21 because he could provide all that information, in any 22 event, through official channels. Did you see that at 23 the time? 24 A. Yes, and actually a lot of the information that he sent 25 me I did nothing with.</p> <p style="text-align: center;">Page 9</p>	<p>1 Obviously, Mr Michel had spoken to someone within 2 the department, I think, in fact, it was Mr Zeff: 3 "I would have thought we can say formally writing to 4 OFT and Ofcom today, meeting with both on Monday to 5 discuss process and timetable. Meetings with News Corp 6 will follow on from this. Everyone is keen to expedite 7 this but impossible to talk about firm deadlines at this 8 stage. Anything more feels like a hostage to fortune, 9 especially any reference to the two weeks." 10 Now, the two weeks had come out of an internal 11 discussion, had it? 12 A. I think so, yes. I think that was the idea, that was 13 the deadline that Mr Hunt wanted to set Ofcom and the 14 OFT, but I can't remember if that's definitely certain. 15 Q. It's clear from this email that they knew, the 16 department knew, that you were a point of contact with 17 Mr Michel, otherwise there's no point sending the email 18 to you. 19 A. Yes. 20 Q. You replied back: 21 "Looks fine to me. I'm happy with us being as open 22 as we can. He's been pushing me quite hard, and if they 23 want to see the OFT ASAP, I would outline the below and 24 perhaps say we'll know more about when that will happen 25 after the meeting on Monday."</p> <p style="text-align: center;">Page 11</p>
<p>1 Q. Of course, you weren't that concerned with the detail of 2 the advice and opinion coming out from Ofcom and the 3 OFT. You were more concerned with the process and 4 managing the relationship with News Corp; is that right? 5 A. Yes. I didn't have a role in, quite rightly, 6 formulating what Ofcom and the OFT were going to advise 7 Mr Hunt. 8 Q. Okay. You say in paragraph 54 that other members of the 9 department had contact with News Corp and/or Mr Michel, 10 and you start to list those on page 09043. I think 11 we're going to take these as read, Mr Smith, because 12 you've correctly set out what appears in the relevant 13 documents, but we are going to alight on a few 14 additional documents and expand one of them. Do you see 15 at the bottom of the page, 54.6, that paragraph? 16 A. Yes. 17 Q. There's reference to a communication on 27 January 2011. 18 I'm not sure that this is even on our system yet. This 19 is additional material which came to us, I think, on 20 Wednesday, but frankly I'm losing track of the days, but 21 in any event it's quite recently. 22 You were forwarded an email from within the 23 department, and it says this: 24 "Adam [this is on 27 January] any views how much we 25 can sensibly tell Fred?"</p> <p style="text-align: center;">Page 10</p>	<p>1 So a message then presumably did go back to 2 Mr Michel along those lines, did it? 3 A. Yes, I assume so. 4 Q. Thank you. There's another email on the next page of 5 your statement, 09044, paragraph 54.7. The document 6 itself is page 10049. It's an email of 1 March from 7 Mr Zeff to the departmental lawyers and you're copied 8 in. So I think it's in an email additional to the one 9 you've set out: 10 "Seems fine to me. Fred Michel rang me about this 11 issue this morning." 12 So that's Mr Michel speaking to Mr Zeff. 13 "I said that although no decisions have been taken 14 in advance of receiving the reports I expected the 15 Secretary of State's strong inclination would be to 16 publish all the reports in the interests of 17 transparency, although we would obviously consider any 18 genuinely substantive concerns from News Corp about the 19 need for confidentiality." 20 Then you said: 21 "Fine with me. I've also reiterated that Jeremy's 22 start point is to publish pretty much everything unless 23 there's a good reason not to." 24 When you say "I've also reiterated", to whom had you 25 reiterated?</p> <p style="text-align: center;">Page 12</p>

<p>1 A. To Mr Michel. I was responding to the point that 2 Mr Zeff had said, "Fred Michel rang me this morning", so 3 I was saying I had also reiterated to Mr Michel. 4 Q. Thank you. At 54.8, there's a typographical error, 5 isn't there, as to the date? It's 2 March 2011. 6 A. Oh yes, sorry. 7 Q. Nothing turns on that. You've set out the substance of 8 the email about News Corp have asked for copies of the 9 document. The request came from Mr Michel, did it? 10 A. I'm not sure. I don't know. Quite possibly. I am not 11 sure that it was me that sent that email, so I think it 12 was an official that sent it, saying that News Corp had 13 asked. 14 Q. Yes. It was a lawyer, actually. It's page 10054. 15 A. So it may well have been either Mr Michel or News 16 Corporation's lawyers. 17 Q. At 10053, there's another email of 2 March from 18 a departmental official to the lawyer. You're copied in 19 on it. This is the evening before the news is going to 20 be broken at, as it happens, 7.30 the following morning 21 on 3 March. You'll remember that. The email is 22 relevant because it ties in with one of Mr Michel's 23 emails which came out the following morning. If you 24 look at 10053, there's various information there as to 25 the decisions the Secretary of State had made as to</p> <p style="text-align: center;">Page 13</p>	<p>1 imagine that he would have guessed that that's where I'd 2 got it from, but I don't know for certain. 3 LORD JUSTICE LEVESON: It has to be News Corp, not only 4 because of the first four words, but also because the 5 first bullet point speaks about "we" in the context of 6 BSKyB, doesn't it? 7 MR JAY: Oh yes. You remember during the course of 8 yesterday's evidence there was reference to News Corp's 9 rebuttal of the Slaughter & May document, which was on 10 24 March. There was going to be a meeting, indeed there 11 was a meeting with the coalition on 24 March. 12 Mr Michel's team had prepared a table, which set out the 13 Slaughter & May view and rebuttal of it. 14 A. Yes. 15 Q. Mr Michel provided that to you. Do you know whether you 16 provided that rebuttal to Mr Hunt or not? 17 A. I didn't, no. 18 Q. You didn't. 19 A. I was fairly certain that Mr Hunt was aware of 20 News Corp's position, so didn't really need to see that 21 amount of detail, and the meeting was for him to listen 22 to the other parties, so I didn't see the need. 23 Q. So he was aware of News Corp's position because it had 24 been publicly stated or some other reason? 25 A. Yes, and they'd obviously made representations regarding</p> <p style="text-align: center;">Page 15</p>
<p>1 timetable. Do you recall that -- 2 A. Yes, I do. 3 Q. There's other evidence of contact. In this same file at 4 09865, it comes up on the screen. Has it arrived yet, 5 Mr Smith? 6 A. Not yet, I'm afraid. (Pause) 7 Yes, it's here now. 8 Q. What had happened is that you had received a note or 9 a critique of this Enders' note or analysis of the UILs 10 that had been sent to you by Mr Michel. We know that 11 because it's page 09522. No need to turn that one up. 12 You forwarded that to Mr Hunt, we can see that from 13 09865, which is the page on the screen, and then you set 14 out at the top of the page, in an email to Mr Hunt, 15 News Corp's initial reaction. Was that initial reaction 16 Mr Michel's reaction or someone else's reaction? 17 A. That was Mr Michel's. He -- I essentially copied and 18 pasted that. So when it says "my initial reaction", 19 that's Mr Michel's. I had copied and pasted that from 20 an email from Mr Michel, which also, as it says at the 21 bottom, attached examples of other undertakings in lieu, 22 which I don't believe I forwarded to Mr Hunt. 23 Q. Did Mr Hunt know that Mr Michel was the source of this 24 initial reaction or not? 25 A. I don't know for certain that he knew that. I would</p> <p style="text-align: center;">Page 14</p>	<p>1 the Ofcom report and they'd obviously also, by that 2 stage, offered undertakings in lieu, so he would have 3 been aware of what News Corporation thought of those 4 undertakings from the discussions that he had with them. 5 Q. In paragraph 57 of your statement, we're back to 09044, 6 you say: 7 "The emails also demonstrate that other key members 8 of the department were aware of the nature of the 9 contact which I was receiving from Mr Michel." 10 We looked at the key ones, haven't we? At no time 11 did any individual express concern about the level of 12 your involvement or provide any guidance? 13 A. Yes. 14 Q. What we're going to do now, Mr Smith, is look at some 15 the most important documents in KRM 18 and see where we 16 are on those, and also at key moments identify whether 17 there was any discussion with anyone else pursuant to 18 any conversation you had with Mr Michel. We're not 19 going to look at every single one, otherwise it's going 20 to take too long. We're going to cross-reference this 21 with your witness statement, because you set out your 22 case in relation to each document there very clearly, 23 don't you? 24 A. Yes. 25 Q. Probably we can start at 01667. This is in the PROP</p> <p style="text-align: center;">Page 16</p>

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<p>1 file, because we're back to KRM 18. Do you have this in 2 front of you?</p> <p>3 A. I have, yes.</p> <p>4 Q. You remember this one. This is the legal advice not to 5 meet with Mr Murdoch today because it's a judicial 6 process, not a policy one. Did you understand that 7 distinction at the time?</p> <p>8 A. Yes, I believe I would have done. I think that was 9 probably the first time that we'd discussed 10 quasi-judicial in one way or another.</p> <p>11 Q. Can you assist with the last sentence of the first 12 paragraph: 13 "Jeremy is very frustrated about it, but the 14 Permanent Secretary has now also been involved." 15 Do you have any knowledge of that or not?</p> <p>16 A. I'm afraid I don't really, no.</p> <p>17 Q. We know from the core records that you spoke to 18 Mr Michel that day twice, once for one minute and the 19 second time for six minutes. 20 I suppose the question is: did you communicate 21 Mr Hunt's frustration and the fact of the Permanent 22 Secretary's involvement to Mr Michel?</p> <p>23 A. I certainly don't remember doing so. I may well have 24 phoned Mr Michel to say that, unfortunately, Mr Hunt 25 could no longer meet Mr Murdoch, but I don't think</p> <p style="text-align: center;">Page 17</p>	<p>1 correct, but more widely was there a similar frustration 2 about the legal constraint on him speaking to Dr Cable?</p> <p>3 A. I don't particularly recall him being that frustrated 4 about it, no.</p> <p>5 Q. Okay. Can you help with the second paragraph about the 6 reference to the advice? The way that reads is that's 7 Mr Michel's advice. Do you see that, Mr Smith?</p> <p>8 A. Yes.</p> <p>9 Q. I suppose the question is: did you express a view which 10 is consistent with Mr Michel's advice?</p> <p>11 A. I may well have said that the advice that Jeremy has 12 received is that he should not meet Mr Murdoch, so I may 13 well have been, sort of, you know, explaining that to 14 him, yes.</p> <p>15 Q. But what about the bit which follows: 16 "You could have a chat with him on his mobile which 17 is completely fine." 18 Did you say that that was appropriate?</p> <p>19 A. I don't remember saying so, no.</p> <p>20 Q. Then: 21 "I will liaise with his team privately as well." 22 Did you make that clear to Mr Michel that that could 23 happen?</p> <p>24 A. I would have said that -- I may well have said that he 25 could stay in contact with me and the officials.</p> <p style="text-align: center;">Page 19</p>
<p>1 I would have put it like that and I don't remember 2 putting it like that.</p> <p>3 Q. Were you aware at that stage of the advice being passed 4 around the department as to whether it was appropriate 5 for Mr Hunt to speak to Dr Cable, for example, about the 6 bid?</p> <p>7 A. I didn't remember it until I saw it in the bundle of 8 documents. I don't know that I saw it at the time or 9 not, but I would have probably been generally aware of 10 it, yes.</p> <p>11 Q. Was the position simply this, that Mr Hunt was concerned 12 about the way the bid might be going in the hands of 13 Dr Cable and that you knew he was frustrated because he 14 wanted to speak to Dr Cable and involve him at a policy 15 level on the merits of the bid more widely? Is that 16 your understanding?</p> <p>17 A. Not really, because I think the frustration, if there 18 was any here, was more about Mr Hunt wanting to talk to 19 Mr Murdoch about the bid and the broadband and local TV 20 and all sorts of other issues. I'm not sure that that 21 frustration relates to Mr Cable, but I don't know 22 myself.</p> <p>23 Q. You're right to say the frustration arguably goes out in 24 two directions. It certainly here is relating to 25 an inability to speak to Mr Murdoch, that's precisely</p> <p style="text-align: center;">Page 18</p>	<p>1 I think the word -- I don't think I would have said 2 "privately".</p> <p>3 Q. "Privately" may just be an inference, but I'm sure it's 4 not an adverb that you yourself employed, is it --</p> <p>5 A. No, no.</p> <p>6 Q. -- because you wanted to be open and transparent, after 7 all?</p> <p>8 A. I think it was either before or after this that 9 Mr Michel did send me some briefing notes on -- 10 actually, I think this was after.</p> <p>11 Q. Can we move forward now to 31 December? 01684, I think 12 it is, the email at the top of the page.</p> <p>13 A. Yes.</p> <p>14 Q. Maybe we should look -- sorry, Mr Smith -- at the 15 previous email, 01683, although you weren't party, were 16 you, to the conversation Mr Michel had with the 17 department because that was a conversation with Mr Hunt 18 directly on Christmas Eve; do you remember that?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Did you have a discussion with Mr Hunt after that 21 conversation or not?</p> <p>22 A. I think it would have probably been unlikely, given that 23 it was Christmas Eve. I can't remember speaking to him 24 and by that stage I think I was back with my family.</p> <p>25 Q. On 01684, this is now New Year's Eve, there's no</p> <p style="text-align: center;">Page 20</p>

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<p>1 evidence of a conversation -- sorry, no evidence of 2 a telephone conversation between you and Mr Michel. 3 Were you off work that day, as it happens, or not? 4 A. Yes, I was, yes. 5 Q. The report itself, do you know when it was received 6 within the office? 7 A. Well, I'd only found out when I came back in the new 8 year that Ofcom had delivered it on the 31st. I don't 9 know to who or at what time, because, as I say, I wasn't 10 there. 11 Q. Okay. Can we move on now to 01687, which is 10 January? 12 Allow you to get your bearings on this one. The phone 13 records show three telephone calls totalling 27 minutes, 14 55 seconds, Mr Smith. Do you remember anything about 15 those calls? 16 A. I don't particularly. I mean, my memory's sort of been 17 prompted by looking at this email, but I didn't really 18 remember it beforehand. 19 Q. Can we be clear which parts of this you might dispute. 20 First of all, if we look at the tone -- now the same 21 point is going to arise on tone, I imagine, 22 throughout -- do you have a comment on the tone? 23 A. Well, I think things -- words like "making a plea" and 24 those, kind of, sort of, more, I suppose, positive, in 25 a sense, for News Corp sort of tone, I don't believe</p> <p style="text-align: center;">Page 21</p>	<p>1 potential damage for the bid." 2 Are you likely to have said that? 3 A. No, I wouldn't have thought so. If Mr Michel had said 4 there would be a cost, I may have just acknowledged that 5 he'd said it, but I wouldn't myself have said, "There's 6 a cost". 7 Q. The potential damage for the bid? You don't think you 8 said that? 9 A. I don't believe so, no. 10 Q. But wasn't it obvious that there was an attendant cost 11 on the CC referral and the delay could damage the bid 12 and that was a concern within the department which you 13 either reiterated or stated to Mr Michel? Would you 14 agree with that? 15 A. I don't think the department was bothered about cost to 16 the bid, no. 17 Q. Or the potential damage for the bid? 18 A. No, no. The department didn't mind one way or another. 19 Q. I think it's clear then that that particular sentence 20 you dispute quite strongly, Mr Smith; is that correct? 21 A. Yes. I don't remember saying that and I didn't think 22 that was the position that the department had. 23 Q. The reference to Mr Richards there is -- 24 LORD JUSTICE LEVESON: Well, I am not sure that quite 25 addresses Mr Jay's question, Mr Smith. You may say,</p> <p style="text-align: center;">Page 23</p>
<p>1 that I would have phrased things like that. I mean, 2 I can understand in this particular email, for instance, 3 that we may well have had a conversation about the 4 issues that Mr Hunt had raised with Mr Richards, but in 5 actual fact, the minutes of the 6 January meeting that 6 Mr Hunt had with News Corporation, Mr Hunt actually set 7 out the issues that he was going to ask for more 8 information from Ofcom for to Mr Murdoch. 9 Q. Yes. 10 A. So we may well have discussed or I may well have 11 confirmed that yes he did indeed mention those things 12 that he mentioned to Mr Murdoch when they met, 13 sufficiency of plurality being one of those. So I think 14 I probably, in that conversation, did confirm that, you 15 know, the information that Mr Hunt had already said to 16 Mr Murdoch, but I don't recognise the -- and the plea to 17 find as many legal errors, again, when Mr Hunt wrote to 18 Mr Murdoch with a copy of the Ofcom report, he invited 19 comment and representations on that, so he had asked for 20 their views on it. I wouldn't have put that as a plea 21 for such -- 22 Q. I think Mr Michel rowed back from the word "plea" when 23 he gave his evidence yesterday. Can I ask you about the 24 middle of that email? You see the reference to: 25 "He understands the cost of a CC referral and the</p> <p style="text-align: center;">Page 22</p>	<p>1 "I don't remember saying something and I don't think 2 that was the position", but going back in your mind to 3 the occasion, is there any circumstance that you can 4 visualise where you might have said something like this? 5 A. Well, as I say, if Mr Michel had sort of said, 6 "Obviously, you know there's a cost to the bid and it 7 might damage it", then I may have said, "I acknowledge 8 that, I understand that", but that wouldn't have been me 9 saying, "I agree and therefore the department is also 10 worried about the damage or the cost". 11 LORD JUSTICE LEVESON: Yes. Might you have given him advice 12 to mention it in their documentation? 13 A. Not specifically. I mean, I'm fairly sure they would 14 have mentioned it anyway. 15 LORD JUSTICE LEVESON: Yes, all right. 16 MR JAY: The interdepartmental meetings you had -- put 17 Mr Hunt out of the picture for the time being -- there 18 must have been discussion more widely about the 19 consequences of the bid being referred to the 20 Competition Commission, Mr Smith, isn't that right? 21 A. I'm sure that we discussed -- I'm not sure that we did 22 really discuss what the consequences were, because the 23 consequences of a referral to the Competition Commission 24 weren't consequences for the department. I mean, we 25 weren't -- they would obviously have consequences for</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 News Corporation, but I don't know that we would have 2 spent much time discussing what those may or may not 3 have been. I can't remember doing so, anyway. It would 4 seem unlikely. 5 Q. Actually, it would seem rather likely, because, although 6 you might have wanted -- I'm sure you would have wanted 7 to keep the issue narrowly to that specified in the 8 Enterprise Act, we understand that, the department would 9 surely have had a wider policy view as to the 10 ramifications of certain consequences, wouldn't it? It 11 would have been unthinkable that it didn't. 12 A. But a referral to the Competition Commission was just 13 one part of that process. I am not sure that there were 14 policy ramifications that would have followed that. 15 I mean, by this stage, Mr Hunt had said he was minded to 16 refer it to the Competition Commission and had told 17 News Corp as much. 18 Q. The meeting with Mr Richards then, which was referred 19 to, that was a meeting Mr Hunt, Mr Richards on 20 10 January; is that right? 21 A. Yes, that's right. 22 Q. Do you accept that the information we see in this email 23 must have come from you? 24 A. I -- the substance of it, I certainly do. But, as 25 I said earlier, on 6 January when Mr Hunt met with News Page 25</p>	<p>1 "Ed was adamant that the threshold was very low ..." 2 That, in fact, is correct, as a matter of law. 3 "... and referral was the only option." 4 That would be a matter of opinion. But unless you 5 told Mr Michel that, he wouldn't know that, would he? 6 A. Well, I would have been confirming what Mr Hunt had 7 said, but in the meeting that Mr Hunt had with Ofcom, 8 the minutes of that meeting show that he wanted to share 9 Mr Richards' answers to those questions with News 10 Corporation. 11 Q. Mm. 12 A. So, in this sense, that's what I was doing. 13 LORD JUSTICE LEVESON: Were you present at this meeting with 14 Ofcom? 15 A. Yes, I was. 16 LORD JUSTICE LEVESON: Well, would you expect Mr Richards of 17 Ofcom formally to respond? He might chat through the 18 issues, but wouldn't you expect Ofcom formally to write 19 a letter in response so that they have the benefit of 20 a considered opinion rather than just the reaction? 21 A. They may well have also done that, yes. I can't quite 22 remember whether they did or not, but, as I say, Mr Hunt 23 had been quite clear that he wanted to share the views 24 and the point about what Mr Richards said there. That's 25 just inferred from the Ofcom report, which had said the Page 27</p>
<p>1 Corporation, he outlined four areas that he was going to 2 talk to Ofcom about, and in the meeting with Ofcom he 3 then said, "I want to share your answers to these points 4 with News Corporation". So News Corporation would have 5 been aware of the sorts of issues that -- well, of the 6 specific issues that Mr Hunt was going to talk to 7 Mr Richards about. 8 Q. Yes, but the -- what Mr Hunt exactly told Mr Richards 9 and the timing of the provision of that information back 10 to News Corp, that revolved entirely on what you told 11 entirely on what you told Mr Michel on this occasion, 12 would you agree? 13 A. The information that I would have told him was exactly 14 the same information that they had already been told on 15 6 January, and the minutes of that meeting do outline 16 the four -- in fact, there's not as much in -- if this 17 email is, sort of, at least broadly accurate, Mr Hunt 18 had four quite substantial points that he was going to 19 raise with Ofcom, which he explained to News 20 Corporation, which the minutes of that meeting clearly 21 show that he explained to News Corporation, so -- 22 Q. That may be right, but at least you're providing 23 confirmation of what Mr Hunt told Mr Richards, and 24 you're also providing fresh information as to what 25 Mr Richards' position was because you see the sentence: Page 26</p>	<p>1 threshold was low and had said that referral was what 2 their recommendation was, so I don't believe either of 3 those two points weren't already well known to News 4 Corporation. 5 Q. Let's look at another email, 01692, 23 January. This is 6 the Sunday morning email. We'd ascertained yesterday 7 there was a 17-minute conversation the evening before, 8 the Saturday evening before. Do you remember that, 9 Mr Smith? 10 A. Yes, I do. 11 Q. The timetable. The reference to the two weeks. Do you 12 see that as the fifth bullet point? 13 A. Yes. 14 Q. That was something that we saw about half an hour ago 15 you weren't going to set out in the email of 27 January. 16 Do you recall that? 17 A. Yes. 18 Q. You were providing, as it were, on this occasion -- it 19 was four days before, of course, 27 January -- 20 information which you weren't prepared to set out in 21 an email communication, is that fair? 22 A. I was reconfirming something that Mr Hunt had told News 23 Corporation on 20 January. The minutes of that meeting 24 show that Mr Hunt said that the consultation will be 25 15 days. So, in actual fact, I was probably slightly Page 28</p>

7 (Pages 25 to 28)

<p>1 out, but I would have been reconfirming that the 2 timetable that Mr Hunt had set out three days previously 3 to my phone call with Mr Michel. 4 Q. What about the prediction that it would all be done by 5 mid-February? Did you say that? 6 A. I don't think so, but that sounds sort of like 7 speculation from a sort of chatty conversation with me 8 and Mr Michel. I don't think I would have said as 9 definitively as that. 10 Q. I'm sure it wouldn't be stated in terms of guarantee, 11 but in terms of speculation, is that something you might 12 have shared with Mr Michel then, Mr Smith? 13 A. Well, I think it follows naturally from -- if Mr Hunt is 14 making a statement on 25 January and that there was 15 going to be a 15-day consultation, then that would -- 16 given a bit of time between the two to get the 17 consultation ready, then that would have sort of 18 followed that mid-February would be when that would end. 19 Q. So are you likely to have said that, aren't you? 20 A. Well, we may have discussed it. I think that could have 21 been something that Mr Michel said or something that 22 I said. 23 Q. If he said it, it is something which you assented to, 24 would you agree? 25 A. I may well have said that that sounded about right or Page 29</p>	<p>1 the publication of the report and the consultation of 2 Ofcom in the process, but he wants us to take the heat, 3 with him, in the next 2 weeks." 4 Do you think you said that? 5 A. I may have said that I understand that you don't want 6 the Ofcom report to be published, and I would have 7 reminded Mr Michel that Mr Hunt had already told News 8 Corporation that the Ofcom report was going to be 9 published. Again, the "take the heat, with us, with 10 him" kind of expression, that wouldn't have been -- 11 I mean, I don't think -- publishing the Ofcom report 12 wouldn't create any heat for Mr Hunt because he was 13 following Ofcom's advice. 14 Q. Okay. He very specifically said -- 15 LORD JUSTICE LEVESON: Hang on, hang on. That has to be 16 read in the context of the preceding sentence: 17 "His view is that once he announces publicly he has 18 a strong UIL, it's almost game over ..." 19 Then there's the publication of the Ofcom report, so 20 there will be heat on the Secretary of State, won't 21 there? 22 A. Um -- 23 LORD JUSTICE LEVESON: Isn't that the point? He's saying 24 he's going to come out by talking about a strong UIL and 25 game over, then the plurality issues are solved, but Page 31</p>
<p>1 something along those lines, yes. 2 Q. What about the next sentence, which I think is possibly 3 going to be more controversial between us: 4 "His view is that once he announces publicly he has 5 a strong UIL, it's almost game over for the opposition." 6 Mr Michel was clear that you did say that but may 7 I have your evidence on that point, please? 8 A. I think that that is a sort of colourful explanation of 9 the process. If you have an undertaking in lieu that 10 Ofcom and the OFT, say, satisfies the plurality concerns 11 that Ofcom had identified, then the whole point of that 12 is that then there are no plurality concerns, so the 13 deal would go ahead. I don't remember saying, "Game 14 over for the opposition", but I can imagine we had 15 a conversation along those lines about the process and, 16 you know, talking around what happens. 17 Q. So your point is that, although the terminology may be 18 a bit flamboyant and you're certainly not sure you used 19 that term, in fact, this is a proposition which is 20 fairly unremarkable because strong UILs would mean that 21 the opposition, as it were, would lose much or most 22 traction; is that correct? 23 A. Yes. 24 Q. What about the next sentence: 25 "He understands fully our concerns/fears regarding Page 30</p>	<p>1 once the Ofcom report comes out, which has all these 2 comments which you've been talking about, well, then 3 there's going to be some flak, and are you inviting 4 Mr Michel to encourage News Corp to share that adverse 5 publicity with him to help deal with it? 6 A. No, because I think at this stage the UILs -- Mr Hunt 7 didn't describe as strong. He announced a few days 8 later that he was minded to refer the deal to the 9 Competition Commission but that News Corporation had 10 offered a UIL and it was right that he consider it, but 11 I don't think he would have said -- in fact, I don't 12 think the statement subsequently demonstrates that he 13 said it was strong. So I'm not sure that that would 14 have been what I'd said, no. 15 LORD JUSTICE LEVESON: Well, of course, one has to be 16 careful that one is looking at what was discussed on the 17 morning of Sunday, 23 January, not what happened two 18 days later when actually announcements were made. 19 A. But I think the substance of this email had been 20 discussed with News Corporation three days before, and 21 it had all been set out that they were going to publish 22 the Ofcom report, that the OFT and Ofcom would look at 23 the UIL that they had received, but there was no mention 24 of it being strong, that if they came back with advice, 25 there would be a consultation, that was all set out in Page 32</p>

8 (Pages 29 to 32)

<p>1 a meeting with News Corporation and I don't believe 2 a strong UIL -- I mean, I'm sure that News Corporation 3 described it as a strong UIL, but I don't believe 4 Mr Hunt did. 5 MR JAY: I think what Mr Michel was trying to do was to pry 6 deeper into departmental thinking on this and he was, if 7 his email is right, achieving greater revelation than 8 emerged at the meeting on 20 January. Do you see that, 9 Mr Smith? 10 A. I'm not sure that I would because, as I say, the points 11 of substance in this email match almost perfectly to the 12 minutes of the meeting on 20 January. 13 Q. Apart from it provides insight into what departmental 14 strategy was, and particularly if you read on: 15 "He very specifically said that he was keen to get 16 to the same outcome and wanted JRM to understand he 17 needs to build some political cover on the process." 18 Did you say that? 19 A. I wouldn't have said that. The "same outcome" was not 20 something that -- I mean they didn't have the same 21 outcome. 22 Q. Why not? 23 A. Well, Mr Hunt's sort of aim was to follow the process, 24 whereas I'm sure Mr Murdoch's aim was to acquire the 25 remaining shares.</p> <p style="text-align: center;">Page 33</p>	<p>1 It follows from what you've just said that you 2 couldn't and wouldn't have said that? 3 A. Yeah; correct. 4 Q. I should also deal with three lines earlier, actually: 5 "If were to follow our option 1 and not provide any 6 details on the Ofcom report, he would be accused of 7 putting a deal together with us behind closed doors and 8 it would get in a much more difficult place." 9 So taking that in stages, News Corp's option 1 was 10 indeed not to provide any details on the Ofcom report, 11 wasn't it? 12 A. I would guess so from this. I know they were organising 13 not to publish the Ofcom reports. 14 Q. That was their plan A, and it was also pretty obvious 15 that, if plan A were followed, that would have 16 a political downside because people would be saying it's 17 a stitch-up, and that's what Mr Michel was clearly 18 communicating to you, or rather you were explaining to 19 him and you reached an understanding about that, didn't 20 you? 21 A. Again, I would have reiterated what had Mr Hunt had said 22 three days beforehand, where he said that the Ofcom 23 report would be published, and I would have probably 24 been explaining the same reasoning that Mr Hunt gave at 25 that meeting. I mean, he had said the report was going <p style="text-align: center;">Page 35</p> </p>
<p>1 Q. Mr Hunt's statutory duty was to follow the process in 2 a quasi-judicial way in the context of the 3 Enterprise Act, but he also had a wider objective which 4 you well understood, didn't you, Mr Smith? 5 A. A wider objective? 6 Q. You're looking at me incredulously. The wider objective 7 was the same outcome, namely the securing of the bid for 8 News Corp, because he thought, in policy terms, that was 9 desirable. 10 A. That wasn't his objective. Now his objective is to 11 carry out his legal and statutory duties. 12 Q. He had to be loyal to his legal and statutory duties, so 13 that that was one compartment of his mind. At the same 14 time you well knew that another compartment of his mind 15 was favourable to the bid because he saw great 16 advantages to the United Kingdom in News Corp securing 17 the bid. You knew that, didn't you? 18 A. Well, he had then received expert advice which showed 19 that there was potentially a problem, and so his 20 objective was to, as you rightly say, follow his 21 statutory duty, follow the expert advice, and that's 22 what he did. 23 Q. Okay. So the line three lines from the end: 24 "He said that we would get there at the end and he 25 shared our objectives."</p> <p style="text-align: center;">Page 34</p>	<p>1 to be published and I would have said as much now. 2 Q. Okay. Can we move on to the evening of that Sunday? 3 LORD JUSTICE LEVESON: Just before we leave this email, 4 Mr Smith, do you understand that reading this email just 5 as an email, it is at least implicit that there is 6 common cause being fought here? 7 A. I think if you take this email as 100 per cent accurate, 8 then I can understand that, yes. 9 LORD JUSTICE LEVESON: Right. Now, there are three 10 possibilities. The first possibility is that this 11 reflected accurately the Secretary of State's view. The 12 second possibility is that it didn't represent the 13 Secretary of State's view, but represented your 14 perception of where the Secretary of State was or would 15 become. And the third possibility is that this just 16 doesn't fairly reflect the conversation at all. 17 A. I think it's a bit of a mix, actually, because it does 18 reflect the detailed -- the substance points about what 19 was going to be published and what the OFT were going to 20 do, what Ofcom were going to do, the fact that there 21 would be a consultation. Those points are factually 22 accurate because Mr Hunt had already told News 23 Corporation those same points three days beforehand. 24 The tone of it I would dispute, yes. 25 LORD JUSTICE LEVESON: So as to that, you say it is the <p style="text-align: center;">Page 36</p> </p>

<p>1 third of the three options I've given you?</p> <p>2 A. I think the third one was you saying that it doesn't</p> <p>3 reflect the conversation at all.</p> <p>4 LORD JUSTICE LEVESON: Correct.</p> <p>5 A. Well, I think it would have reflected my confirmation of</p> <p>6 those points, but beyond that, no.</p> <p>7 LORD JUSTICE LEVESON: Yes, that's why I prefaced my</p> <p>8 question by referring to the implicit nature of the</p> <p>9 email, not drilling into specific facts.</p> <p>10 A. Oh, okay. In that case, yes.</p> <p>11 LORD JUSTICE LEVESON: All right.</p> <p>12 MR JAY: The evening of that self-same Sunday, 01693,</p> <p>13 Mr Smith. It's really reiteration of some of the points</p> <p>14 we'd already seen in the morning email, isn't it?</p> <p>15 A. Yes, I believe so. I think this was another attempt at</p> <p>16 not publishing the Ofcom report and things like that.</p> <p>17 Yes.</p> <p>18 Q. The reference to the publication of the Ofcom report</p> <p>19 helping him, that's Mr Hunt, to buy some time</p> <p>20 politically, do you agree that you might have said that?</p> <p>21 A. No. I mean, I would have said that we are publishing</p> <p>22 the Ofcom report to be as open, as transparent as</p> <p>23 possible.</p> <p>24 Q. "And he's keen for me to work on the statement during</p> <p>25 the course of tomorrow."</p> <p style="text-align: center;">Page 37</p>	<p>1 stated and there, by implication, the conversation you</p> <p>2 had with Mr Michel?</p> <p>3 A. Sorry, the email's just disappeared. Ah, thank you.</p> <p>4 I certainly recognise things like "He will thus</p> <p>5 confirm that Ofcom recommended him to refer", because,</p> <p>6 as I say, Mr Hunt had already told News Corporation</p> <p>7 that.</p> <p>8 Q. I think you dispute the sentence:</p> <p>9 "... he has tried to get a version which helps us."</p> <p>10 Which is the second bullet point.</p> <p>11 A. Yes. I mean, the statement by this stage had been</p> <p>12 started to be drafted and none of the drafts that I saw</p> <p>13 or indeed the statement that Mr Hunt gave in the end</p> <p>14 qualified the threats identified by Ofcom. In fact,</p> <p>15 said that Mr Hunt agreed with them and I don't believe</p> <p>16 it was helpful.</p> <p>17 Q. It's fair to you, on this occasion, to reemphasise that</p> <p>18 we only have an 18-second telephone call and we have</p> <p>19 a series of fairly limited text messages, so whatever</p> <p>20 inferences may be drawn from that could be drawn from</p> <p>21 that.</p> <p>22 A. I think --</p> <p>23 Q. Do you see the point?</p> <p>24 A. Yes, and I think things like the timings of the press</p> <p>25 statement, I believe he'd been in touch with another</p> <p style="text-align: center;">Page 39</p>
<p>1 Might you have said that?</p> <p>2 A. Certainly not, no.</p> <p>3 Q. Why were you prepared to speak to Mr Michel on a weekend</p> <p>4 like this? What was the urgency?</p> <p>5 A. I don't particularly believe there was any urgency, but</p> <p>6 if I was phoned or had a missed call, I would call him</p> <p>7 back because I would think that was the right thing to</p> <p>8 do.</p> <p>9 Q. At this stage, your relationship with him was warm and</p> <p>10 friendly presumably, was it?</p> <p>11 A. Yes. He's always struck me as friendly.</p> <p>12 Q. As I said later on, certainly by the time we get to</p> <p>13 June, there was possibly a chilling in the relationship</p> <p>14 as I think frustrations had built up on both sides by</p> <p>15 then. Would that be a fair characterisation?</p> <p>16 A. I think after six months of weekend calls and things</p> <p>17 like that, I was getting quite frustrated, yes.</p> <p>18 Q. 01695, this is 24 January. We're now on the Monday</p> <p>19 afternoon. Bear with me, please. There are various</p> <p>20 text messages which preceded this, as well as</p> <p>21 an 18-second conversation. The text messages are ones</p> <p>22 we looked at yesterday. They're the exhibit to</p> <p>23 Mr Michel's first statement at 03256, although they're</p> <p>24 not particularly revealing. Do you recognise at least</p> <p>25 the substance of the email in terms of the facts therein</p> <p style="text-align: center;">Page 38</p>	<p>1 official on that, and a Parliamentary written statement,</p> <p>2 I'm not sure that -- I think they all go out at 9.30.</p> <p>3 I'm not sure that that's kind of confidential, so he</p> <p>4 could quite easily have found that out from a variety of</p> <p>5 sources.</p> <p>6 Q. You've noted, of course, the bit he's put in bold in the</p> <p>7 parentheses:</p> <p>8 "Although absolutely illegal."</p> <p>9 Is it possible you gave him the impression that you</p> <p>10 were providing him with a sneak preview of something</p> <p>11 which you perhaps ought not to have done at that stage?</p> <p>12 A. No. I mean, I don't really understand that point,</p> <p>13 because, again -- sorry to sort of reiterate it again --</p> <p>14 but these points about referring to Ofcom and having</p> <p>15 a consultation, four days earlier Mr Hunt had sat in</p> <p>16 a room with Mr Murdoch and explained that that's what</p> <p>17 was going on happen next. Um, the minutes of that</p> <p>18 meeting were then published, if not on the 25th then</p> <p>19 certainly maybe in March, I can't quite remember, but --</p> <p>20 so I don't -- I would not have been saying anything here</p> <p>21 that hadn't already been said to them, so I'm not quite</p> <p>22 sure where the sort of excitable tone in the bold bit</p> <p>23 would come from.</p> <p>24 Q. Okay. Let's move on to a different email. I think</p> <p>25 there's more relevant material to put to you. 01704,</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

1 the morning of Tuesday, 25 January, this is the one
 2 about:
 3 "He can't say they are too brilliant otherwise
 4 people will call for them to be published."
 5 The "too brilliant" relate to the remedy, and the
 6 remedy, of course, is the UILs. Do you follow me?
 7 **A. Yes.**
 8 **Q.** Your text message, which is set out at 03245, timed at
 9 8.03 that morning:
 10 "There's plenty -- potential to mitigate problems!
 11 We can't say they are too brilliant otherwise people
 12 will call for them to be published. Will check on
 13 meetings."
 14 So what were you intending to convey by that
 15 message?
 16 **A. I think by this stage, Mr Michel had got quite cross**
 17 **that Mr Hunt's statement didn't, as he had been asking**
 18 **for and pushing for previously -- you will call the UILs**
 19 **strong or brilliant or, you know, some sort of**
 20 **description like that, and the first part of my text was**
 21 **a bit of a -- the potential to mitigate problems bit was**
 22 **paraphrasing what Mr Hunt's statement had said that had**
 23 **gone out slightly earlier that morning, was an attempt**
 24 **by me to say there is support for the UIL. I mean, if**
 25 **you read what Mr Hunt said, I mean it didn't support the**

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1 **UIL, so my attempt there was quite sort of shaky ground,**
 2 **if you like.**
 3 **Then, the other part was too flippant and jokey,**
 4 **I admit that.**
 5 **Q.** The position is that Ofcom was recommending a referral
 6 to the CC. The UILs had been published or -- at least
 7 published internally on 20 January and this was the
 8 remedy which would prevent the referral to the CC if
 9 they were strong enough, but the departmental view,
 10 apparently, was that the UILs were solid, were good --
 11 indeed it was your term, "brilliant", but you couldn't
 12 say they were brilliant, otherwise that would undermine
 13 the process and, what's more, as you rightly pointed
 14 out, people would ask for them to be published. Don't
 15 you accept that that's the only reasonable
 16 interpretation?
 17 **A. That was an attempt by me to pacify and mollify by being**
 18 **slightly disingenuous. If you read what Mr Hunt had**
 19 **said, he didn't say they were brilliant.**
 20 **Q.** No, because he couldn't say they were brilliant, because
 21 if he did, he would appear parti pris, but the internal
 22 thinking was that they were the solution, and you were
 23 telling Mr Michel, "Yes, we agree they're the solution,
 24 but we can't say that expressly", don't you see that,
 25 Mr Smith?

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1 **A. I'm not sure that the department at that stage had had**
 2 **a view on them, because, for instance, we hadn't**
 3 **received the final versions of them. They came from**
 4 **News Corporation a few days later, so -- and I certainly**
 5 **wouldn't have read them in detail by any stretch of the**
 6 **imagination, and it wasn't for me to decide whether they**
 7 **were the solution or not. That was for Ofcom and the**
 8 **OFT.**
 9 **Q.** Yes, it wasn't for you, but the department would
 10 nonetheless have a view about the quality of the UILs,
 11 wouldn't they?
 12 **A. I'm sure individuals -- each individual in the**
 13 **department had a view, yes, but I mean they were quite**
 14 **rightly and understandably lengthy and technical**
 15 **undertakings, which needed to be looked at by those who**
 16 **were experts in that area.**
 17 **Q.** No doubt it wasn't a final considered view, but the
 18 preliminary view of the department was that these were
 19 good UILs, and you were communicating that sentiment to
 20 Mr Michel, weren't you?
 21 **A. Well, they were good enough to be considered, because**
 22 **that's what Mr Hunt had told News Corporation on**
 23 **20 January, and that's what he had told Parliament. It**
 24 **was right that he consider them, but they weren't**
 25 **anything more than that.**

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1 **Q.** I think your position is that the "too brilliant" was
 2 really disingenuous on your part to get the guy to shut
 3 up, is that what it amounts to --
 4 **A. Yes.**
 5 **Q.** -- and not an insight into either your thinking or
 6 anybody else's thinking. Is that what also it amounts
 7 to?
 8 **A. That's correct.**
 9 **Q.** Let's move on to the next email, 01705:
 10 "Just had a chat with JH."
 11 That's you. It's not a chat, it's a text message.
 12 **A. Yes.**
 13 **Q.** "... before he went to Parliament to get further
 14 reasons why not stronger support of the remedy."
 15 They're still trying to find out from you why you
 16 are not publicly providing stronger support for the
 17 UILs; do you agree with right?"
 18 **A. Yes.**
 19 **Q.** The email said:
 20 "He said he had no legal wriggle room in a statement
 21 to Parliament."
 22 That's what the text message says. Text message
 23 says:
 24 "Other than what Jeremy and I have told you, we have
 25 no legal room in a statement to Parliament."

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<p>1 What did you mean by that?</p> <p>2 A. Well, other than what Mr Hunt had told them on the 20th</p> <p>3 and what I then reiterated, that they were going to be</p> <p>4 considered, we hadn't come to a view and therefore</p> <p>5 Mr Hunt couldn't speculate on them in Parliament.</p> <p>6 Q. Of course he wouldn't, because if he did, he would be</p> <p>7 pre-judging the issue, wouldn't he, Mr Smith?</p> <p>8 A. Yes, I assume that's what I was referring to in terms</p> <p>9 of --</p> <p>10 Q. You were stating what was obvious, in one sense, that he</p> <p>11 couldn't mislead Parliament, that he had to say to</p> <p>12 Parliament, "We've just got the UILs, they need to be</p> <p>13 considered properly in accordance with due process", but</p> <p>14 the message you're giving to him, particularly the use</p> <p>15 of the language "legal wriggle room", is, in fact, the</p> <p>16 private view of the department is that these are rather</p> <p>17 good UILs. Isn't that the reasonable inference one can</p> <p>18 draw?</p> <p>19 A. I think again this is another example of me trying to</p> <p>20 get him off my back.</p> <p>21 Q. One strategy you might have used by this point is simply</p> <p>22 to turn off your mobile phone, frankly. Weren't you</p> <p>23 reaching the point that this was getting much too close</p> <p>24 now, to this man?</p> <p>25 A. I don't think that I would have been doing the job that</p> <p style="text-align: center;">Page 45</p>	<p>1 "I think we're in a good place tonight, no?"</p> <p>2 Then three minutes or slightly less later, you say:</p> <p>3 "I agree, coverage looks okay, let's look again in</p> <p>4 the morning though."</p> <p>5 So "Let's look again in the morning though" must be</p> <p>6 a reference to the morning papers?</p> <p>7 A. Yes.</p> <p>8 Q. Obviously. But you're agreeing with his proposition,</p> <p>9 "I think we're in a good place tonight, no?" "I agree",</p> <p>10 do you see that?</p> <p>11 A. I see that that's how, in the sort of many months later</p> <p>12 that looks, yes, but I think this is maybe where the</p> <p>13 weakness of text messages come in, in that I was</p> <p>14 agreeing that I think Jeremy thought his statement had</p> <p>15 gone well. I'm not -- the "we are in a good place",</p> <p>16 maybe I should have said, "I think Jeremy is happy with</p> <p>17 how it went", rather than, "I agree", but text messages</p> <p>18 aren't quite used in that way, so I was certainly</p> <p>19 referring to Jeremy was happy with the way his statement</p> <p>20 had gone.</p> <p>21 Q. How did you know he was happy with the way his statement</p> <p>22 had gone?</p> <p>23 A. Well, I would have spoken to him, I'm sure, afterwards.</p> <p>24 Q. It's part of the informal communications you've been</p> <p>25 describing to us yesterday and earlier today. You were,</p> <p style="text-align: center;">Page 47</p>
<p>1 I had assumed in terms of being a point of contact with</p> <p>2 News Corporation if I'd stopped being the point of</p> <p>3 contact with them. I mean, in hindsight I would have</p> <p>4 maybe liked to have at some stages to have had a break</p> <p>5 from it, yes.</p> <p>6 Q. Yes. It's impossible, Mr Smith, to identify a moment at</p> <p>7 which some might say, well, you've crossed the line, do</p> <p>8 you follow me, because this is an accumulation of</p> <p>9 material and there isn't a, sort of, a chasm and which</p> <p>10 you can say, well, you've now jumped into it because you</p> <p>11 are acting inappropriately.</p> <p>12 If you look at the next text messages and perhaps</p> <p>13 the relevant email, 01707, this is the one where there's</p> <p>14 a reference to:</p> <p>15 "JH believes we're in a good place tonight."</p> <p>16 Do you remember that one?</p> <p>17 A. Yes, I do.</p> <p>18 Q. The antecedent text messages say -- this is at our</p> <p>19 page 03245, it's not necessary to turn it up -- we saw</p> <p>20 it yesterday, but I'm going to read them out. Mr Michel</p> <p>21 to you:</p> <p>22 "Today went well, look at the coalition campaign</p> <p>23 statement, so weak!"</p> <p>24 You don't reply to that. So he waits four hours</p> <p>25 nearly and then texts again. It's 10.26 at night:</p> <p style="text-align: center;">Page 46</p>	<p>1 at this point, in quite frequent contact with Mr Hunt,</p> <p>2 weren't you?</p> <p>3 A. Yes. If there was a big set piece like that, I think</p> <p>4 also on that day we may well -- we would have almost</p> <p>5 certainly described how we thought it had gone, yes,</p> <p>6 definitely.</p> <p>7 Q. It would have been inconceivable had there not been</p> <p>8 a chit chat about it, wouldn't there?</p> <p>9 A. I think so, yes.</p> <p>10 Q. As part of that chit-chat, albeit informally, Mr Hunt</p> <p>11 would have expressed a view about the UILs to you,</p> <p>12 wouldn't he?</p> <p>13 A. I don't think he would have necessarily done, at that</p> <p>14 stage, beyond -- because like I say, he, I don't think,</p> <p>15 would have gone into them in huge amounts of detail. He</p> <p>16 would have looked at the advice from officials and</p> <p>17 looked at the end UILs and come to the view that they</p> <p>18 were worthy of Ofcom and the OFT looking at, and</p> <p>19 I suppose they must have been good enough to meet that</p> <p>20 criteria, yes, but beyond that I don't think we would</p> <p>21 have discussed much more.</p> <p>22 Q. Mr Smith, he must have had a preliminary reaction to</p> <p>23 them. I don't think anybody would suggest he could have</p> <p>24 properly reached a final view about them and expert</p> <p>25 advice would have been necessary anyway. But it would</p> <p style="text-align: center;">Page 48</p>

<p>1 have been contrary to human nature to think that, at 2 least provisionally, he didn't have a view about them -- 3 A. Well, no, I think his view was that they were 4 certainly -- that they weren't so bad that they wouldn't 5 have come close to remedying the problems, and therefore 6 they needed to be properly looked at. 7 Q. But it went much higher than that, Mr Smith, that you 8 were saying in the earlier text message, "We can't say 9 here too brilliant". I'm not putting to you that 10 Mr Hunt used the phrase "brilliant" or anything like it, 11 but he must have given you some indication that the UILs 12 were more than satisfactory to his provisional 13 perception. Would you agree with that? 14 A. No, I think those texts were me being flippant and, in 15 hindsight, too loose with my language. I don't think 16 that they're evidence of that at all. 17 Q. Well, whatever your texts say, you knew, didn't you, 18 what Mr Hunt's view was about the UILs at that stage? 19 A. Yes, and I think I've explained it. 20 Q. So it was little more than a studied neutrality, really: 21 we're not going to put them in the dustbin, they're 22 worthy of consideration, let's see what the experts say. 23 It was just that, was it? 24 A. I think it would have to have been slightly more than 25 that for them to have been considered. I think you have</p> <p style="text-align: center;">Page 49</p>	<p>1 documents. Would help me prepare for the public debate, 2 enjoy golf." 3 So you were playing golf that weekend, it seems. 4 Then you say at 17.30: 5 "I haven't actually got them at the moment. 6 Officials just told me about them. Don't mention them 7 to anyone like OFT, et cetera. I will -- and if you -- 8 if we need them, I'll show you." 9 Why did you say don't mention them to anyone like 10 OFT, et cetera? 11 A. Because it was the department that would send any of the 12 relevant submissions to OFT and Ofcom, which I think 13 they did subsequently, so they were submissions for the 14 department to do with them as they saw fit. 15 Q. One possible inference is that you were going to do 16 something a little bit surreptitious. Would you accept 17 that? 18 A. I do accept that it looks like that way, yes, but 19 I don't believe anything like that happened. 20 Q. Mr Michel might have got the impression that you were 21 acting a little bit conspiratorially, you see, and that 22 you were now pretty much on side. Do you feel that that 23 was a reasonable perception he might have derived? 24 A. I'm not sure that he would have derived that I was on 25 side from that text message, no.</p> <p style="text-align: center;">Page 51</p>
<p>1 to make an initial judgment that they may mitigate the 2 problems that Ofcom have found in their report. 3 Q. Thank you. Press on. Just bear with me, Mr Smith. 4 Seeking to look at every single one of these. 5 01709, apart from the use of the word "privately" at 6 the end, is this an email which you would recognise? 7 A. Its um ... yes. I am not sure Steve Hunger, or that 8 I particular -- I assume the JH at the bottom is 9 probably a reference to myself. 10 Q. Yes. 11 A. I asked to share the OFT letter -- I would have 12 probably -- if Mr Michel said, "Would you like to see it 13 in" I would probably have said, "Fine, send it". 14 Likewise for the business plan. But in terms of what 15 Ofcom and the OFT were looking at, then that's 16 a reconfirmation of what Mr Hunt had said to Parliament 17 and to News Corporation already. 18 Q. Okay. Let's look at 01712, the Friday afternoon email 19 of 4 February. There are some text messages here. 20 A phone call at 9.24 in the morning -- I think it was 21 the morning of 3 February -- which lasted 23 minutes, 15 22 seconds, but no phone call on the Friday evening, but 23 some text messages on the Friday evening. Mr Michel to 24 you: 25 "Are you able to send me the Enders and Slaughter</p> <p style="text-align: center;">Page 50</p>	<p>1 Q. The assessment at the start of the email: 2 "Feels overall the process is in a good place and 3 the media attention on the remedy has disappeared." 4 First of all, had media attention on the remedy 5 disappeared? 6 A. I honestly can't remember. I would imagine there was -- 7 this is not that long after the fact that Mr Hunt had 8 said there was a remedy, but this is before the remedy 9 itself had been published, because that, I don't think, 10 was published until March. 11 Q. Mm. 12 A. So I can remember that there was some sort of 13 speculation of what that remedy might be, but I don't 14 know that there was a great deal of press coverage. 15 Q. Might have you given him the impression that, overall, 16 the process was in a good place? 17 A. If I had, I mean I can't remember doing so, but I would 18 have meant that the statement had gone well and the 19 remedy had been I think -- yes, by this stage it had 20 been sent to OFT and Ofcom, and that they were 21 considering it, so the process was being followed, 22 I suppose, was working. 23 Q. If you regarded this process as no different from any 24 other policy issue, which I think is paragraph 51 of 25 your statement, why would you insulate from</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 consideration wider policy considerations which either 2 you were sympathetic to or you knew Mr Hunt was 3 sympathetic to?</p> <p>4 A. Which wider policy considerations?</p> <p>5 Q. Well, the fact that, regardless of the strict test in 6 the Enterprise Act, you would have regard to whether 7 this bid was in the wider interests of broadcasting, 8 newspapers and news media in the United Kingdom?</p> <p>9 A. Oh, I see. Well, because the one caveat that I added to 10 my treating it as a normal policy project was that I was 11 aware that Mr Hunt had to consider it only along the 12 lines of media plurality and so that was what he was 13 basing his considerations on and that alone.</p> <p>14 Q. 01717, 9 February. There's a lot of material around 15 this one. There's one text message I hadn't referred to 16 with Mr Michel earlier that afternoon on 9 February at 17 14.13 hours, our page 03247. You said: 18 "Take your stab proof vest with you. I'm hoping for 19 an update later on process. Will let you know of 20 anything new." 21 What was that on reference to? Can you remember?</p> <p>22 A. News Corporation were -- well, I think Mr Michel had 23 told me that they were going to see Ofcom and the OFT to 24 discuss the remedies. In fact, I think he may have even 25 emailed me the agenda that they'd agreed, and knowing</p> <p style="text-align: center;">Page 53</p>	<p>1 (10.58 am) 2 (A short break) 3 (11.06 am)</p> <p>4 LORD JUSTICE LEVESON: I'd be grateful if everybody could 5 make sure that their mobiles aren't near microphones 6 because there's apparently been some interference.</p> <p>7 MR JAY: I overlooked a relevant text on an earlier email, 8 I'm sorry. 01705, which is Mr Michel's email of 9 25 January. This is the legal wriggle room email. The 10 email goes on to say: 11 "... and he only needs some space to prevent any 12 accusation of deal-making at this stage." 13 There's a text from you which says: 14 "It's all exactly as we said. We just need space." 15 Do you remember that?</p> <p>16 A. Yes.</p> <p>17 Q. What were you intending to convey by that text?</p> <p>18 A. That we needed space and time to consider the UILs and 19 Ofcom and the OFT needed time to do so. My text didn't 20 say the subsequent remainder of that sentence.</p> <p>21 Q. The reference to "space" rather than "time" sort of 22 creates a political dimension here. You were, were you 23 not, communicating the basic message, notwithstanding 24 the Ofcom report, it all had to go to the CC, the UILs 25 were the way of avoiding that consequence. Politically,</p> <p style="text-align: center;">Page 55</p>
<p>1 the tension between --</p> <p>2 Q. It's someone else, actually. You're meeting I think it 3 was Lord Black, or they were meeting Lord Black that 4 afternoon.</p> <p>5 A. Oh, really? Oh, okay, sorry. So that would be my -- 6 well, knowing that he was against the bid, that would 7 have been my rather flippant comment --</p> <p>8 Q. Oh, I see.</p> <p>9 A. -- which, again, I wouldn't have used that language 10 again, if I had the opportunity.</p> <p>11 Q. Yes. So the context is clear now. He was going to -- 12 they were going to see someone who was against the bid 13 and you were saying rather flippantly, "Put on a stab 14 proof vest". It's as simple as that.</p> <p>15 A. Yes.</p> <p>16 Q. So it's another example of flippancy generated, perhaps, 17 by the fact that this is a text message and people 18 sometimes are flippant on text. Is that it?</p> <p>19 A. Yes, and clearly not as funny as I thought it was at the 20 time.</p> <p>21 LORD JUSTICE LEVESON: Mr Jay, we've had an hour and a half. 22 MR JAY: Oh, have we?</p> <p>23 LORD JUSTICE LEVESON: I think we ought to give the 24 shorthand writer a little break. We'll just take a few 25 minutes.</p> <p style="text-align: center;">Page 54</p>	<p>1 you needed space for those UILs properly to be 2 considered and to avoid the accusation of deal-making, 3 but, at the end of the day, the UILs would secure the 4 intended result, namely no reference to the CC. Do you 5 accept all of that?</p> <p>6 A. No. I was saying that we needed space and time to 7 consider the UILs.</p> <p>8 Q. You don't accept that the term "space" imports something 9 more than time? Do you see what I mean?</p> <p>10 A. I do see, yes. I mean, this is probably -- again, text 11 messages are not the best way to convey --</p> <p>12 Q. It's just the accumulation of text messages, which 13 arguably give rise to an impression. One can't identify 14 one particular message and say, "Aha, this means X 15 rather than Y", it's just the series of them. Do you 16 accept that they are giving a rise at least to the 17 perception that you were on side with Mr Michel?</p> <p>18 A. I can see how that perception would be created, yes.</p> <p>19 Q. 9 February, this is the Swan Lake, as it were, email, 20 01717. 21 I'd set out the position here yesterday, Mr Smith, 22 the number of calls you had. The call out that was made 23 to Mr Hunt, which was at 19.03 for 3 minutes, 24 23 seconds, can you help us about Swan Lake? Do you 25 know where Mr Hunt was?</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

<p>1 A. I don't. I know that I wasn't at Swan Lake, because 2 I've never seen Swan Lake, but I don't know where -- 3 I understand when me and Mr Hunt discussed this before 4 I resigned, this particular one, I understand that he 5 thought he went to Swan Lake the following week, but 6 I don't know. 7 Q. We do know that it wasn't on at Covent Garden that 8 night, but that's not -- you can't take that point any 9 further? 10 A. No. No. 11 Q. Can you help us, though, as to why you had a call with 12 Mr Hunt that evening shortly after 7 in the evening? 13 A. I can't -- as I said before, I spoke to him quite often 14 on every day, really, so I don't know what it would have 15 been about. Could have been about any number of issues. 16 Q. Can ask you, please, about the content of the email? In 17 particular, the second bullet point: 18 "He understands this is a deal stopper for us and 19 shares our frustration -- 'we all know what Ofcom's 20 attentions are and have been from the start on this'. 21 Did you say that? 22 A. The bit in quotes? No. 23 I think the "deal stopper for us" section, by this 24 stage Ofcom and the OFT had sent correspondence to News 25 Corporation saying what they thought had to be in the Page 57</p>	<p>1 department's view. 2 Q. That wasn't Mr Hunt's view of Mr Richards, for example? 3 Is that your evidence? 4 A. Yeah, I mean I think Mr Hunt holds Mr Richards in very 5 high regard. 6 Q. The third bullet point: 7 "He can't instruct his officials to get back to 8 Ofcom as he's not supposed to be aware that we have 9 received the letter and its content." 10 That was a correct statement of the position as at 11 that time, wasn't it? 12 A. Well, I think this is -- so Mr Michel has sent me 13 Ofcom's letter to News Corporation saying that the 14 undertakings in lieu must include X, Y and Z, and until 15 reviewing all of the evidence for this Inquiry, I didn't 16 actually read -- and he sent me lots of those things, 17 which were not of interest to me because the work was 18 being done by Ofcom and the OFT. So I suppose he may 19 have inferred that we weren't supposed to know that 20 because Ofcom hadn't told us, but he had shared it with 21 me and explained what was in it. 22 Q. The point at the end: 23 "I told him [that's Michel telling you] he had to 24 stand for something ultimately and this was his chance 25 to dismiss Ofcom's views and show he had some backbone." Page 59</p>
<p>1 undertakings in lieu, which, at the time, Mr Michel was 2 sharing with me, but I actually didn't look at them, and 3 he explained to me that the one that they thought was 4 a show-stopper was the idea of Mr Murdoch not being 5 chairman of the spun-off Sky News. So I would have 6 acknowledged -- if he'd said "That's a show-stopper", 7 I would have acknowledged that. 8 Q. But didn't the department privately believe that Ofcom 9 were dead against this bid and would do all they could 10 to stop it and that, in effect, meant referring it to 11 the CC because that was the limit of what you could do? 12 A. No, not at all, because I think Ofcom's eventual advice 13 on the undertakings in lieu, once they'd got all of the 14 various concessions that they'd asked for, was that the 15 undertakings did indeed address the plurality issues 16 that they had identified. 17 Q. But didn't -- wasn't it well understood in the 18 department that Ofcom were against the bid, or at least 19 that was the perception, and would do all they could to 20 stop it? I'm not suggesting that they would do more 21 than they could, or would act outside the law, but they 22 would take it as far as they could take it. Wasn't that 23 the departmental view? 24 A. No. Well, I certainly knew that that's what News 25 Corporation thought about Ofcom, but that wasn't the Page 58</p>	<p>1 By that stage the conversation arguably was getting 2 a little bit rancorous, was it? 3 A. Well, I don't actually remember him saying those sort of 4 specific words, but I do know that they were constantly 5 pushing for the department to essentially ignore Ofcom. 6 LORD JUSTICE LEVESON: Are you acknowledging, Mr Smith, that 7 this comes out of a conversation you had with Mr Michel? 8 A. Well, I don't particularly remember the conversation, 9 but I don't understand from the records necessarily 10 where -- I don't think -- my understanding is that 11 I don't think he spoke to Mr Hunt at this stage. 12 LORD JUSTICE LEVESON: Because, I mean the word "he" must 13 change, and it may be consequent upon Mr Michel's rather 14 unusual use of the initials "JH": 15 "I have managed to get JH quickly before he went in 16 to see Swan Lake." 17 Well, you didn't go to see Swan Lake, actually it 18 looks as if nobody went to see Swan Lake, but that's 19 a slightly different point. 20 "He really feels this Ofcom letter is the further 21 weapon for them to block the deal ... he agreed ..." 22 That presumably refers, if the conversation is with 23 you, to you, and do I understand that -- this is the 24 analysis you're doing with Mr Jay -- although some of 25 the underlying facts may be accurate, the spin on this Page 60</p>

<p>1 letter is wrong?</p> <p>2 A. Yes. I mean, I think that is a clear case of Mr Michel</p> <p>3 putting their views and me simply acknowledging them.</p> <p>4 LORD JUSTICE LEVESON: Well, is it? Let's take the next</p> <p>5 one:</p> <p>6 "He understands this is a deal stopper for us."</p> <p>7 In other words, he's saying you, Mr Smith,</p> <p>8 understand this is a deal stopper. It's rather more to</p> <p>9 say he, that is you, share the frustration. You may</p> <p>10 recognise the frustration, but the question is whether</p> <p>11 you share it.</p> <p>12 A. Well, quite. I didn't. I understood that they felt</p> <p>13 that that particular issue was a deal stopper and I can</p> <p>14 understand that they were frustrated by that.</p> <p>15 LORD JUSTICE LEVESON: So the truth is that this is, in</p> <p>16 reality, a complete misrepresentation of your position?</p> <p>17 A. Yes. I would imagine we discussed each of these points,</p> <p>18 but I don't recognise the fact that I would have put it</p> <p>19 like this.</p> <p>20 LORD JUSTICE LEVESON: I'm sorry. To say, "I don't</p> <p>21 recognise" admits of the possibility that it might have</p> <p>22 been so.</p> <p>23 A. Oh, well, sorry, no. No, in that case, that's not the</p> <p>24 right word for me to use.</p> <p>25 LORD JUSTICE LEVESON: All right.</p> <p style="text-align: center;">Page 61</p>	<p>1 this final hurdle."</p> <p>2 If the text message is accurate, you had expressed</p> <p>3 an opinion which was the same as the opinion which was</p> <p>4 coming from Mr Michel, do you see that?</p> <p>5 A. Sorry, the text isn't there.</p> <p>6 Q. The bit at the start, "it is ridiculous and</p> <p>7 duplicative"?</p> <p>8 A. I don't know what that's in reference to and I don't</p> <p>9 understand the following bit about articles of</p> <p>10 association either, so I'm not quite sure what that</p> <p>11 conversation was about. The personal for Mr Murdoch bit</p> <p>12 I understand, but I don't understand the previous bit.</p> <p>13 Q. Do you think, Mr Smith, that you would have expressed</p> <p>14 an opinion to Mr Michel which was not Mr Hunt's opinion?</p> <p>15 A. I'm sure I would have done at some stage, yeah.</p> <p>16 Q. So are you sure that you would or you wouldn't have</p> <p>17 done?</p> <p>18 A. I'm sure that I often say things that aren't Mr Hunt's</p> <p>19 opinion, yes.</p> <p>20 Q. Can I take that in stages? Do you feel that you knew</p> <p>21 Mr Hunt's opinion on all the issues we've just been</p> <p>22 discussing?</p> <p>23 A. So on the -- this is an example of one of the things</p> <p>24 I would have gone back to sort of talk to Mr Hunt about.</p> <p>25 I remember a sort of very brief conversation about the</p> <p style="text-align: center;">Page 63</p>
<p>1 MR JAY: After the backbone, or rather the lack of it:</p> <p>2 "He said he couldn't ignore Ofcom, he had brought</p> <p>3 them into this OFT process to get some cover and in</p> <p>4 public debate, he would get absolutely killed if he did</p> <p>5 such a thing."</p> <p>6 So this is yet again, but in flamboyant language,</p> <p>7 a reference to the need to create some space. Do you</p> <p>8 see that?</p> <p>9 A. Well, I would have said that Mr Hunt wasn't going to</p> <p>10 ignore Ofcom because that would be breaching the legal</p> <p>11 process, as I understood it. I suppose, yes, the</p> <p>12 colourful language bit, but that, I don't think, was me.</p> <p>13 Q. The final conversation that evening was just after 8.00</p> <p>14 between you and Mr Michel on the phone. There is a text</p> <p>15 message at page 12781, which Mr Michel sends to you at</p> <p>16 20.48 hours that evening, which refers to the</p> <p>17 conversation you had about 45 minutes earlier:</p> <p>18 "Agree -- it is ridiculous and duplicative. As for</p> <p>19 ability to implement -- unfortunately it would be</p> <p>20 possible, as you could just include in the articles of</p> <p>21 incorporation an obligation that we would vote against</p> <p>22 amendment. Jeremy should be able to say it makes no</p> <p>23 sense and reject -- he has that discretion! Let's</p> <p>24 discuss in the morning. It will be a very personal</p> <p>25 decision for James. Let's see how we can get through</p> <p style="text-align: center;">Page 62</p>	<p>1 chairman of the newly spun off Sky News. It may not</p> <p>2 have been on this day, may have been a bit later,</p> <p>3 possibly even the following Monday when we met to</p> <p>4 discuss that with Mr Hunt.</p> <p>5 Q. Yes, the Friday actually. We'll come to that email.</p> <p>6 A. I knew that he thought and he said as much, that if</p> <p>7 Ofcom thought that was the right thing to do, they</p> <p>8 should do it. But in terms of some of the other</p> <p>9 details, articles of association and things like that,</p> <p>10 I don't remember -- I wouldn't have gone to him with</p> <p>11 those bits of detail.</p> <p>12 Q. We're talking about the big points, namely Ofcom's</p> <p>13 position, the reaction to the UILs, the need to create</p> <p>14 space, Mr James Murdoch being chairman of the newly spun</p> <p>15 off Sky News, or rather not being chairman. Did you</p> <p>16 know what Mr Hunt's opinion was on those big issues?</p> <p>17 A. I certainly knew -- yes, pretty much, but I knew that,</p> <p>18 essentially, all of those were that he'd entrusted Ofcom</p> <p>19 and the OFT to do that work, and he would take advice</p> <p>20 very, very seriously.</p> <p>21 Q. Of course, Mr Smith --</p> <p>22 A. But --</p> <p>23 Q. I'm talking about informal discussions you had with</p> <p>24 Mr Hunt. You were his special adviser. He wanted to</p> <p>25 know what your view was, presumably; is that right?</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

1 **A. Not particularly, I don't think, on whether, for**
 2 **instance, Mr Murdoch should or shouldn't be allowed to**
 3 **be -- we didn't -- because we'd, sort of, given that**
 4 **role or rather Mr Hunt had given that role to Ofcom and**
 5 **the OFT, the discussions we would have had were about**
 6 **surely, therefore, you ought to follow that advice.**
 7 **I don't remember us particularly getting into detailed**
 8 **conversations about whether we thought one bit of that**
 9 **advice was right or not at this stage, no.**
 10 Q. I think it's clear though that you can't help us with
 11 what happened during that short conversation you had
 12 with Mr Hunt shortly after 7 o'clock on the evening of
 13 9 February, is that fair?
 14 **A. That's fair. I mean, it could have been about arts**
 15 **policy or something. I just can't remember.**
 16 Q. It's not really likely, Mr Smith, frankly. You're in
 17 the middle of a series of communications with Mr Michel.
 18 Mr Michel's email makes it clear that there had been --
 19 just been communication with you. The only reasonable
 20 inference is that you were speaking to Mr Hunt about
 21 something relevant these matters. Would you agree with
 22 that?
 23 **A. Well, no, because we spoke on all sorts of different**
 24 **things at all sorts of different times.**
 25 Q. At 7.03 in the evening, when he's about to do something

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1 else, whether it's go to the ballet, it appears not, or
 2 something else altogether? Surely it must have been
 3 sufficiently important and sufficiently relevant to that
 4 which was occupying your mind at that exact time, namely
 5 conversations with Mr Michel. Don't you accept that?
 6 **A. For me to call Mr Hunt at 7 o'clock in the evening was**
 7 **not unusual, and for me to only just catch him because**
 8 **he was off to do something is equally not unusual.**
 9 **I may well have not seen him that day and wanted to**
 10 **quickly talk to him about something. 7 o'clock in the**
 11 **evening was quite early in the evening for -- I mean,**
 12 **I had conversations with Mr Hunt much later than that.**
 13 **I don't think that that's --**
 14 Q. Can I ask you to reconsider that answer in the context
 15 of this, that you are in the middle of a series of
 16 communications with Mr Michel, who's bombarding you with
 17 stuff, probably getting on your nerves, on your version
 18 of events. You then break off from that, have a short
 19 conversation with Mr Hunt, we see this email, and then
 20 you have another conversation with Mr Michel shortly
 21 after 8 o'clock. Isn't the only reasonable inference
 22 that the conversation you had with Mr Hunt had to do
 23 with these matters?
 24 **A. I think you could infer that, but what I'm saying is**
 25 **I don't know whether that's what I spoke to him about**

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1 **and it could perfectly reasonably be about any other**
 2 **number of issues.**
 3 Q. Yes, in theory, it could have been, and had there been
 4 a conversation with Mr Hunt which relates to this, your
 5 evidence, I suppose, is, well, it was a perfectly
 6 neutral conversation, after all, it was all going to be
 7 with the expert advice received from OFT and Ofcom in
 8 due course, it's nothing to do with the sort of stuff we
 9 read in this email, is that it?
 10 **A. When I spoke is to -- as I say, I do remember speaking**
 11 **to Mr Hunt about the particular issue of the independent**
 12 **chairman, so I mentioned to him that News Corp thought**
 13 **that was a show-stopper or deal breaker or whatever the**
 14 **language that was being used. So I certainly did speak**
 15 **to him at some stage about that, but I don't know that**
 16 **it was that phone call and it may well have been the**
 17 **following day or indeed after the weekend.**
 18 Q. 01720, Mr Smith, Friday evening. Call data demonstrates
 19 18 minutes plus on the phone to Mr Michel for each of
 20 two conversations. You're giving him a sneak preview
 21 here, it appears, of the OFT and the Ofcom view,
 22 particularly in relation to the UILs; is that correct?
 23 **A. No, because the correspondence and the discussions that**
 24 **Ofcom and the OFT had been having with News Corporation,**
 25 **they had written, I believe, either on the 10th or the**

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1 **11th to News Corporation saying these are the things**
 2 **that need to be in the UILs, and I think News**
 3 **Corporation wrote back saying they're not going to be,**
 4 **or disagreeing to put those in, and so they were very**
 5 **well aware of those particular issues, and it was**
 6 **also -- I think it was around this time that these**
 7 **particular issues were being discussed now within the**
 8 **department and around this time, I believe, that**
 9 **Mr Richards called me to explain that those were the**
 10 **issues that were the sticking points.**
 11 **So they were -- in terms of those two points about**
 12 **the acquisition of shares and non-exec chairman, News**
 13 **Corporation were well aware of those.**
 14 Q. It goes much further than that, this email:
 15 "JH doesn't want this to go to the CC. He also said
 16 his officials don't want this to go further as JH
 17 believes it would kill the deal."
 18 The JH there, of course, can only be you, if it's
 19 anybody. Did that not represent Mr Hunt's view or at
 20 the very least your view?
 21 **A. No, because at that point we were referring it to the**
 22 **Competition Commission. It had been announced that he**
 23 **was minded to refer it to the Competition Commission.**
 24 Q. Yes, he was minded to, but he was hoping that the UILs
 25 would prevent that happening because he didn't really

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<p>1 want it to go to the CC. That was his private view and 2 you knew that, didn't you, Mr Smith?</p> <p>3 A. But if the Ofcom and OFT advice had been these UILs 4 aren't good enough, he would have sent it to the 5 Competition Commission, so I think the facts don't bear 6 that out.</p> <p>7 Q. No, the facts are rather different. Had the UILs been 8 strong enough, a reference to the CC would have been 9 avoided, wouldn't they?</p> <p>10 A. Yes.</p> <p>11 Q. That was his ultimate goal, wasn't it, to avoid 12 a reference to the CC on the basis that the UILs would 13 be strong enough, and you knew that, didn't you?</p> <p>14 A. But he -- I don't -- I don't particularly think so, no.</p> <p>15 Q. There was also antipathy in the department to the Ofcom 16 position because everybody thought, as we see here, that 17 they were taking a subjective and non-legal approach and 18 that was the view that was privately being communicated 19 to you, wasn't it?</p> <p>20 A. That was the view that was being communicated to me by 21 News Corporation, that Ofcom were taking a --</p> <p>22 Q. Of course it was but it was also the view which your 23 department held, wasn't it?</p> <p>24 A. No, or nobody said that to me, no.</p> <p>25 Q. I suppose the only way we can resolve this issue is to</p> <p style="text-align: center;">Page 69</p>	<p>1 could work and that News Corporation had conceded on the 2 issues that Ofcom and the OFT had wanted in there, then 3 there was every reason for the department and Mr Hunt to 4 be confident about those undertakings in lieu.</p> <p>5 Q. You're almost communicating there a public relations 6 message, and coming close to putting yourself in the 7 same boat as News Corp by using the pronoun "we". Do 8 you accept that?</p> <p>9 A. "We" would have been "we" the collective department 10 I wouldn't have put "I" because I obviously wouldn't 11 have been saying anything publicly.</p> <p>12 Q. 01732, a reference to a debriefing of JH, which is you. 13 There are four telephone conversations which precede 14 this email, lasting eight minutes in all. You 15 apparently said you're not impressed, and are going to 16 speak to Jon Zeff and see both why Ofcom is intruding in 17 the process in this way and how OFT can be influenced by 18 it at this stage. Do you feel this is a fair reflection 19 of those conversations?</p> <p>20 A. I don't. I don't actually particularly understand this 21 email. Mr Hunt had asked Ofcom to be involved in this 22 process, so I don't understand the reference to 23 intruding in the process. So I don't think I would have 24 said that. If Mr Michel was phoning me up again to moan 25 about something Ofcom and the OFT had said needed to be</p> <p style="text-align: center;">Page 71</p>
<p>1 say this email is, if your case is right, completely 2 incorrect. I don't think there's any mid-position here, 3 is there, possibility for misunderstanding?</p> <p>4 A. In terms of -- well, there are some -- I mean, the 5 two -- the Ofcom concern on non-exec chairman, OFT 6 concern on acquisition of shares, those two points are 7 correct. But yes, sort of the tone of the rest of it 8 I wouldn't agree with.</p> <p>9 Q. 01727 -- I'm afraid I have to miss out some I was 10 intending to take you to. There simply isn't going to 11 be time to deal with everything. It's what you yourself 12 said to Mr Michel:</p> <p>13 "Interesting. More evidence that we need to be 14 strong and confident when we go to public consultation." 15 What did you mean by that?</p> <p>16 A. The point of the email below is that there were -- 17 I think it was on the radio, wasn't it? Yes. 18 An individual from Enders' analysis had been saying that 19 there were possible remedies that could deal with the 20 Ofcom concerns and, of course, by this point News 21 Corporation had written to Mr Hunt to concede on the 22 points that Ofcom and the OFT had asked to be in the 23 UILs, so the point there was that, if people that had 24 previously been opposed to the undertakings in lieu were 25 now saying that there may be undertakings in lieu, that</p> <p style="text-align: center;">Page 70</p>	<p>1 in the undertakings in lieu, that may well be the basis 2 for this email, but I don't recognise the "not 3 impressed" bit and I don't really know what the issue is 4 that this refers to.</p> <p>5 Q. The next email at 01733 is a conversation later on that 6 evening, the Wednesday evening, now at quarter to nine 7 or thereabouts:</p> <p>8 "His team talked to Ofcom tonight." 9 We know there was a phone call at quarter past 8 10 which lasted 9 minutes and 40 seconds and this email is 11 therefore 18 minutes after that call. You must have 12 told him that your team -- or rather officials within 13 the DCMS had spoken to Ofcom that night, would you 14 agree?</p> <p>15 A. I could have done, or Ofcom and the OFT could have told 16 him, but yeah, it could well have been me, yes.</p> <p>17 Q. But it's likely that it was you, wasn't it because 18 otherwise he wouldn't have put it in these terms? Would 19 you agree with that?</p> <p>20 A. Not particularly, because some of the terms that he's 21 used have previously not been accurate. I mean it 22 certainly may well have been me, but I don't know for 23 certain because I don't really recognise again at what 24 point we are on this, so.</p> <p>25 Q. "The feedback he got tonight is that all was going well</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 and it was only discussion on details." 2 So that appear to be something that you communicated 3 to Mr Michel during that call, would you accept that? 4 A. I would have done -- well, as I say, I think I wouldn't 5 have particularly known whether things were going well, 6 so if the officials had said to me it was going well or 7 if Ofcom and the OFT had said to News Corp it was going 8 well, I might well have agreed with that, but -- 9 Q. Ofcom and OFT would be unlikely to have told News Corp 10 it was going well. Your officials must have 11 communicated that message to you. That's the only 12 reasonable inference and you were communicating that 13 back to Mr Michel. Don't we gather this clearly from 14 this email, Mr Smith? 15 A. Well, they may well have -- I mean, there are other 16 emails where the News Corp legal counsel -- 17 Q. I'm not interested in the other ones. Just this one. 18 A. I was going to say that there are other people that have 19 told them that things are going well but this one could 20 have been me, yes. But, as I say, I can't remember, but 21 it may well have been. 22 Q. Okay. 3 March -- oh no, sorry, 24 February. 01735: 23 "JH just texted that he can't interfere with the 24 process but can give us more time to sort things out. 25 He can't engage with substance while Ofcom is working</p> <p style="text-align: center;">Page 73</p>	<p>1 had written to Mr Hunt on I think it was 14 February and 2 then that had prompted a letter from Mr Hunt to News 3 Corporation to say, as such, these are promising but 4 there are four points that you need to address. So 5 I assume that that's what I was just simply stating 6 again, that bit there. But yes, the rest of it is. 7 Q. The early morning of 3 March, you'll remember that since 8 you were up all night, really. 9 A. Pretty much, yeah. 10 Q. There's a whole flurry of text messages. There are 11 three telephone calls, the last one lasts 15 minutes and 12 5 seconds at 3.05 in the morning, and they're the emails 13 which start at 01742. We can look particularly at 14 01744, can't we, which is the email at 3.25 and which 15 must have been based on what you told people during the 16 just after 3 am conversation; would you accept that? 17 A. I would, and also I do vaguely remember this call. As 18 you say, it was in the middle of the night. 19 Q. Do you feel -- 20 LORD JUSTICE LEVESON: You didn't say, "Look, whatever 21 you're doing, 3 o'clock in the morning is not a time to 22 communicate with me!" 23 A. I was still in the office working with the officials on 24 the statement the following day. 25 MR JAY: Oh right.</p> <p style="text-align: center;">Page 75</p>
<p>1 with us. He can only use his officials to put pressure 2 at this stage." 3 There are a series of text messages which bear on 4 this. Just bear with me while I find them. At 012863 5 you text saying: 6 "They said this was a promising basis on which to 7 work in their advice to JH. Not quite complete 8 acceptance, so I guess that's why we're looking for 9 confirmation on some things." 10 Then a little bit later on, 012870: 11 "We can't interfere with the process, really [that's 12 exactly reflected in the email]. We can give more time 13 but not deal with substance while they're working with 14 you." 15 Again, that's reflected in the email. Then finally 16 012875: 17 "Just replied, will talk to officials tomorrow 18 morning and let you know." 19 So the part of this with which you would disagree 20 was putting pressure by officials because that's not 21 borne out by your texts. Do you see that? 22 A. Yes. 23 Q. But the rest is reflected by text, isn't it? 24 A. Yes. But I mean the promising basis from which to work 25 in their advice was the advice that Ofcom and the OFT</p> <p style="text-align: center;">Page 74</p>	<p>1 A. Working on the documents and working on the preparation 2 for the statement the next day. I wasn't answering my 3 phone calls whilst asleep, no. 4 MR JAY: Did your officials know that you were texting 5 Mr Michel and speaking with him on the phone? 6 A. They did at this stage because there was a long -- and 7 some of the previous emails refer to this -- there was 8 a long and protracted process of redacting the documents 9 that would be necessary for the statement the following 10 morning between the officials and News Corporation, and 11 we had a conversation about not confirming that the 12 decision had been made until those redactions had been 13 made, and there are some emails from some of the 14 officials to me saying things like, "Have you heard from 15 them whether they're going to redact these sorts of 16 things yet?" 17 So they certainly knew I was in contact at that 18 stage, yes, and I would understand that the lawyers were 19 also in touch with each other as well. 20 Q. Given that there were all these more formal channels, in 21 particular, the involvement of lawyers, discussion of 22 redactions, finalising the drafting, as it were, of the 23 UILs, what was the point of you having this extra 24 chit-chat with Mr Michel on top of it? 25 A. In the case of the redactions I was asked to essentially</p> <p style="text-align: center;">Page 76</p>

<p>1 put some pressure on News Corporation to agree with what 2 the department wanted. You know, they were clearly -- 3 I don't know what the actual issue was, but clearly News 4 Corporation thought something was commercially sensitive 5 and our department didn't and, therefore, they asked me 6 to try and forcibly put the point that these things 7 needed to be unredacted so the public could see them. 8 Q. I understand. Let's move on to 01748, which is 9 an email, afternoon of 10 March after -- it's the 10 34-minute catch up with you, it's not the one-hour catch 11 up. You'll remember that one. 12 A. Oh yes. 13 Q. "Overall he believes that the debate is extremely quiet 14 and lacks arguments." 15 Do you think you said that? 16 A. I don't think so, because at that time I think the 17 debate was rather raging. 18 Q. I think it's more a comment on the quality of the 19 debate -- 20 A. Oh, right, I'm sorry. 21 Q. -- in the sense that not necessarily its rank or lack of 22 it but that the contrary argument was rather thin. Do 23 you see that? 24 A. Yes. I do, actually, yes, I see that now. 25 Q. But Mr Michel was probably quite insistent, wasn't he, Page 77</p>	<p>1 subsequently been asking you questions to elicit 2 precisely that information. I'm not saying that you 3 provided that information but that's what he was trying 4 to do. 5 A. Yes. 6 Q. Do you think that you might have given him information 7 regarding what other editors might have told the 8 Secretary of State? 9 A. I don't think so because, as I say in my written 10 evidence, I wasn't, as far as I can remember actually, 11 on any of the calls -- listen to any of the calls, 12 because the handling of the press was the other special 13 adviser's job, so I don't think so, although, as I also 14 say, I think the views of all the other newspapers were 15 well-known and public -- 16 Q. I'm not sure the business about Mr Dacre being clear 17 that their campaign was purely motivated for commercial 18 reasons, that was certainly a possible inference, but if 19 he told that to the Secretary of State, which according 20 to this he did, and then the Secretary of State told 21 that to you, that's something which you could then 22 logically impart to Mr Michel, would you agree? 23 A. If that had happened, yes. 24 Q. Do you think this might have happened? 25 A. I don't believe it did, no. Page 79</p>
<p>1 at this point in his conversations with you? 2 A. Yes. I mean, he had been, I think, insistent 3 throughout, but now I think they were wanting to get on 4 with things as quickly as possible and were being quite 5 pushy. 6 Q. But more importantly, the point of the call from his 7 perspective was to find out at the very least what you 8 were thinking, and you must have worked that out by now, 9 that he'd been texting and calling you so often. It 10 wasn't to impart information to you, it was more to 11 extract knowledge of what your thinking was so that 12 would provide his team with reassurance. Didn't that 13 occur to you? 14 A. It did, but I also think that it was -- a lot of the 15 calls were to try and put pressure on me to go and then 16 sort of, you know, interfere in the process that was 17 happening, which I think he sort of -- you know, 18 misplaced calls in that sense, because that wasn't my 19 role. 20 Q. I'm sure he may have been overreaching himself to that 21 extent because, as you rightly say, you couldn't 22 influence the process but, at the very least, he wanted 23 to know what the department was thinking, didn't he? 24 A. I'm sure he would have wanted to know that, yes. 25 Q. You must have known that because he must have Page 78</p>	<p>1 Q. Why not? 2 A. I don't remember Mr Hunt saying anything like that to me 3 and I don't remember saying anything like that to 4 Mr Michel. 5 Q. What about the reference to judicial review, Mr Smith? 6 Do you think there was a discussion about that? 7 A. There may well have been a discussion about -- 8 Q. There may well have been or there was a discussion? 9 A. Well, I can't remember, so I think, using this as a sort 10 of memory prompt, I could imagine that there was 11 a discussion where, if the process was followed 12 properly, that there would have been unlikely to have 13 been a judicial review, but I'm no lawyer to have been 14 able to make that particular judgment -- 15 Q. But it was a concern to News Corp that there might be 16 a judicial review at the end of this; is that correct? 17 A. Yes, yes. 18 Q. The department was well aware that, given the 19 sensitivity of all of this, judicial review was always 20 going to be a possibility; are we agreed? 21 A. I think we sort of operated on the -- that there would 22 be -- 23 Q. It was understandable that there would be talk about it, 24 if only to allay concerns on both sides, would you also 25 agree? Page 80</p>

<p>1 A. I would agree he that we probably discussed it but I'm 2 not sure that we would have been able to allay concerns. 3 Because, as I say, I wouldn't have been in any position 4 to do that -- 5 Q. You couldn't give him a definitive view but you might 6 have been able to share what departmental thinking was 7 at that stage, namely there wasn't any basis for 8 a successful judicial review. Do you feel that that 9 might have occurred? 10 A. Not particularly. I mean it's sort of I suppose 11 self-evident that if we'd followed a process that the 12 department would have been confident in that process, 13 but I don't know -- I think in -- within the department, 14 the view was very much that there was going to be 15 a judicial review one way or another, whatever the 16 decision, just because the sort of stakes were so high. 17 I don't think that was a legal view, I just think that 18 was sort of the general view that the department had. 19 Q. The final point on this email, three-quarters of the way 20 down: 21 "On 21 March his team will look at all the 22 submissions, it should take three to four days. Lots 23 will be pure anti-Murdoch ones. He doesn't expect any 24 groundbreaking issue." 25 Do you think that's the sort of point you might have</p> <p style="text-align: center;">Page 81</p>	<p>1 Q. You would have held a view or you did hold a view? 2 A. I mean, I would have held a view, I had a view. 3 Q. You had a view? 4 A. Yes. 5 Q. Thank you. What was your view then at this point? Your 6 personal view? 7 A. My personal view was that, if the consultation didn't 8 throw up any new issue that we hadn't thought of, that 9 the undertakings in lieu were therefore likely to have 10 worked. 11 Q. That's not really a personal view. That's a sort of 12 studied legal response, namely: "We'll go through the 13 procedures in the Enterprise Act and everything's played 14 with a straight bat and fair enough". I'm talking more 15 widely. Share with us your personal view about this 16 bid. Were you in favour of it or not? 17 A. Well, as I say, I don't think my view that I've just 18 expressed was a legal one. I was essentially saying 19 that, at that stage, there had been no issue of 20 substance that had come up that, in my personal view, 21 made a difference. 22 Q. All right. 23 A. As I said yesterday, I actually wasn't that fussed about 24 it, so I'm sorry if my personal view was a bit 25 legalistic and processy, but that's what it was.</p> <p style="text-align: center;">Page 83</p>
<p>1 made to Mr Michel? 2 A. I can imagine that we discussed that and I imagine 3 that -- 21 March, I think, was when the consultation 4 closed, and there had been an organised campaign to -- 5 by that stage, to sort of bombard MPs and such like with 6 emails and letters about it, so I imagine we may well 7 have been speculating that that would continue. 8 Q. But do you think that's the term you might have used, 9 "anti-Murdoch ones"? 10 A. I don't remember. I don't think so. 11 Q. If you don't remember, you don't know then, do you? 12 A. No. 13 Q. Privately, Mr Smith, by this point, you must have had 14 a personal opinion not just necessarily on the narrow 15 test of the Enterprise Act but more widely about the 16 merits of this bid. Are we agreed? 17 A. Yes, I think I probably did have a personal view. 18 Q. Well, hold on, Mr Smith. It's not "probably did". It 19 would have been inconceivable that you didn't. You're 20 a special adviser, you're well conversant with the 21 issues. People tend to have, if I may say so, somewhat 22 polarised views about this. I'm not suggesting that you 23 held a polarised view, but I am suggesting that you at 24 least held a view. Is the answer "yes" or "no"? 25 A. Yes, I would have held a view, but --</p> <p style="text-align: center;">Page 82</p>	<p>1 Q. That rather suggests that you didn't really have 2 a personal view, that you didn't feel strongly about 3 this, indeed, really, you were neutral about it. Is 4 that it? 5 A. No, I didn't feel strongly about it, but I did have 6 a personal view, as I've just expressed. 7 Q. And there were all these people clamouring against the 8 bid, saying it was disastrous for the interests of the 9 United Kingdom because it would bundle too much economic 10 and media power in one individual. Okay, that was one 11 side of the camp. The other side of the camp was 12 completely the contrary. Very good for the United 13 Kingdom, we'd be put back years, I think someone said, 14 if we don't do this. 15 A. (Nods head) 16 Q. Can I just understand where you stood on that wider 17 issue? 18 A. I suppose on the wider issue I sort of looked at it from 19 the point of view of the consumer not probably being 20 that concerned because get their news or watch their TV 21 and don't really, you know, mind too much about where 22 that comes from. 23 Q. Hm. I'm getting the sense that you're slightly parrying 24 the questions and you don't want to tell us what your 25 personal view was. I suspect that we all know what it</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 was and you're just not going to come out with it. Is 2 that where we are going to remain on this? 3 A. No, because, I think, I have told you my personal view, 4 that I didn't think that there was an issue with the 5 UILs at the time and, therefore, that the bid was fine 6 but if any of the points of substance came out that may 7 well change my personal view. 8 LORD JUSTICE LEVESON: Can I try it a slightly different 9 way? We spoke yesterday about the memorandum that the 10 Secretary of State sent to the Prime Minister, in which 11 he makes it abundantly clear that plurality issues, in 12 other words, the very stuff of the Enterprise Act, had 13 to be put to one side. That putting that to one side, 14 there were very positive reasons for this to go ahead. 15 Policy reasons. Now, you saw that? 16 A. (Nods head) 17 LORD JUSTICE LEVESON: Would it be right, you had a part in 18 drafting it? 19 A. I think, on that occasion, Mr Hunt drafted it and sent 20 it to me -- 21 LORD JUSTICE LEVESON: For textual consideration. 22 A. -- for typos and facts -- yes. I think -- I mean my 23 view on that was that I probably didn't go quite as far 24 as Mr Hunt on that sense, but -- 25 LORD JUSTICE LEVESON: Well, play about with that. Quite as Page 85</p>	<p>1 Q. I think you have to agree with that. 2 A. I was just trying to think of an example that I could 3 refer to in that sense, but I'm not entirely certain 4 that I ever did give that much of a view. Most of these 5 emails would have been issues raised by Mr Michel that 6 I would have acknowledged or understood. Not sort of 7 talked at great length about what my own personal view 8 might have been, which he would have known was actually 9 a bit of an irrelevance. 10 Q. Mm. But throughout this narrative, throughout these 11 emails, did you feel that you were speaking for your 12 Secretary of State? 13 A. Not on the points of -- not on the sort of detailed 14 issue points, no. I wouldn't have within doing my job 15 if I'd had to run and check what Mr Hunt thought about 16 every stage of the process. In this particular bid, 17 I would argue that I was actually just being more of 18 a buffer and a channel of communications rather than 19 representing Mr Hunt's views to anybody. 20 Q. But insofar as you were speaking on behalf of anyone, 21 you weren't speaking purely in your own personal 22 capacity, were you? 23 A. No. The explanations I would give on process or 24 reconfirming what Mr Hunt had told them, that would have 25 been on behalf of the department, yes. Page 87</p>
<p>1 far? I think Mr Jay just wants to know what your 2 reaction was to the whole idea. Is that fair, Mr Jay? 3 MR JAY: Yes, I think it is. 4 LORD JUSTICE LEVESON: Thank you. 5 A. As I said, I didn't feel that strongly about it one way 6 or another, and at that stage that we're talking about 7 now, I couldn't see any particular problems with the 8 UILs, but I -- if new evidence or a new opinion had come 9 forward, then one's allowed to take that into account 10 and change one's mind. 11 LORD JUSTICE LEVESON: But on the wider question, you didn't 12 feel quite as strongly as the Secretary of State. Of 13 course, that was his view and he's entitled to reach 14 whichever view he wishes about the wider policy 15 questions -- 16 A. Yes. 17 LORD JUSTICE LEVESON: -- however irrelevant they may be. 18 A. Nor did I feel as strongly against it as a lot of the 19 other opinions that were expressed. I was not that 20 fussed, as I said yesterday. 21 MR JAY: I suppose the logic of that, to the extent to which 22 you did communicate a personal view to Mr Michel, that 23 personal view would have been more muted than Mr Hunt's 24 view. Would you agree with that? 25 A. Um ... not -- well ... Page 86</p>	<p>1 Q. Insofar as you expressed a view, you certainly would not 2 be intending to express a view which was contrary to 3 your Secretary of State's view; is that correct? 4 A. Yes. I mean, if I did, I would have heavily caveated 5 that with it being my view. 6 Q. Yes, but you would have been logically overreaching 7 yourself if you expressed a view which was contrary to 8 your Secretary of State's position; is that correct? 9 A. Yes. 10 Q. On many of the bigger issues, as I describe them, you 11 knew what the Secretary of State's view was; is that 12 correct? 13 A. Yes, as did News Corporation, because he'd told them. 14 Q. Yes, but you were in a different position to News 15 Corporation because you had access to your Secretary of 16 State, he had access to you, and you had personal and 17 private communications with him, didn't you? 18 A. Yes, but I think on the points of substance that we've 19 discussed, the ones that I referred to in this email, 20 had already been communicated to News Corporation by 21 Mr Hunt. 22 Q. Yes, but those points of substance were more to do with 23 the strict legal process. I'm going to the underlying 24 policy issues, which I'm suggesting you had 25 conversations with Mr Hunt about. Is that correct? Page 88</p>

22 (Pages 85 to 88)

<p>1 A. I don't think we had many conversations about the policy 2 issues around this bid. We might have talked about in 3 the future what we think the process should be changed 4 to. I mean, he's publicly said he thinks that it's 5 worth thinking about taking the secretaries of state out 6 of this process. Those sorts of policy issues we would 7 have discussed it. 8 Q. Did not Mr Hunt ask you for advice, as you were his 9 special adviser, in relation to policy issues which 10 could be capable of bearing on the bid? 11 A. I don't think there were any policy issues capable of 12 bearing on the bid because he was considering the bid 13 under that strict legal process and considering it 14 against the media plurality concerns. I don't think 15 there were any wider policy considerations. 16 Q. In terms of what might have been wider strategy, in 17 terms of securing an outcome, were those matters 18 discussed or the subject of discussion between you and 19 Mr Hunt? 20 A. Of achieving an outcome? 21 Q. Yes? 22 A. No. The outcome being that we would follow the process, 23 yes. I mean we had lots of process meetings, yes. 24 Q. Okay. Can we go back to some emails? These are 25 highlights. 01777, we're now onto 17 May. There were</p> <p style="text-align: center;">Page 89</p>	<p>1 "You did tell me by 24 June ... I might need JRM to 2 call JH. Let's discuss." 3 Finally at 8.21: 4 "... and that hasn't changed [you say] but we can't 5 tell journalists that, can we?" 6 Why did you say that, Mr Smith? 7 A. I think any speculation that I may have had about the 8 date that something may have happened was just that, 9 purely speculation, and you don't want to say randomly 10 what date might be publicly because then if things 11 happen to mean you miss that date you would look a bit 12 foolish. 13 Q. It does give the impression, more the impression, that 14 you're giving information to Mr Michel which is somewhat 15 surreptitious, something that would not properly enter 16 the public domain. Would you agree? 17 A. Yes. That's my wild speculation of when the date might 18 be. It wasn't in the public domain, no. 19 Q. Again, the impression might be of a relationship between 20 you and Mr Michel which was or had become far too close. 21 Would you agree with that? 22 A. No. I don't think our closeness had changed much. 23 I mean the frequency of contact had obviously increased, 24 but -- 25 Q. When I say had become, it possibly had become too close</p> <p style="text-align: center;">Page 91</p>
<p>1 some telephone conversations before this call. The 2 issue about whether Mr Murdoch was going to speak to 3 Mr Hunt, I don't think is necessary to go into, but it's 4 the sentence: 5 "He understands our frustration on the process." 6 Do you think that's something you might have 7 communicated to Mr Michel? 8 A. If he was -- I imagine by this stage, as we're in May, 9 they were very frustrated with the amount of time that 10 it had taken and I might have acknowledged that 11 frustration, yes, so I can understand how that would be 12 frustrating. 13 Q. The next email, 01778, this one is -- does match up with 14 a text message at 03249. Yes. Before this email was 15 sent, Mr Michel texted you at 20 to 8 in the morning: 16 "You could have warned me about yesterday's 17 speech!!!" 18 Then you mention back. 19 "It wasn't a speech, it was one remark to 20 journalists and doesn't say anything different to what 21 I've said to you. Will take as long as it takes and we 22 need to get it right!" 23 Do you remember sending that -- 24 A. Yes. 25 Q. Then there's another text at 8.19:</p> <p style="text-align: center;">Page 90</p>	<p>1 as early as January, but this was a perpetuation of 2 a state of affairs which some might say was 3 inappropriate, inappropriately close, in other words. 4 Would you accept that characterisation? 5 A. I think the tone of some of the language that I may have 6 used in some of the texts, in hindsight, was a bit too 7 flippant and loose, certainly. Of, but I don't think 8 the substance of what we've been through was 9 inappropriate. 10 Q. The next one, 01780, 2 June. Before that email was 11 sent, you sent a text message to Mr Michel: 12 "Over the last few days I have been causing a lot of 13 chaos and moaning from people here on your behalf. 14 I shall have an update later today." 15 That's precisely transcribed here in the email. But 16 why did you say that? 17 A. This is the one that I do regret the most. By this 18 stage I was probably coming toward the end of my tether, 19 as it were, and I sent him a text to get him off my 20 back, but I certainly don't think anybody in the 21 department would have said that that's what I'd been 22 doing, and I certainly wasn't doing anything on their 23 behalf, but in hindsight I shouldn't have sent it, but 24 it was an attempt to mollify him. 25 Q. Either to mollify or to indicate assent to the</p> <p style="text-align: center;">Page 92</p>

<p>1 proposition, I suppose, there's a degree of collusion 2 here between you, that you've become so close that you 3 were almost working together. Do you feel that that's 4 a reasonable inference or not? 5 A. I can see how people would think that, but I sent it to 6 mollify him and get him off my back, not to do as you've 7 just suggested. 8 Q. There's another email at about this time. It's 9 lunchtime on 3 June, 01781. This is the email about the 10 blame game, you'll remember that one. 11 A. Yes. 12 Q. There were two short phone calls at 10.43 and 12.48 13 hours. Then a 19 minute, 26 second call at 13.23. It's 14 subject to confusion about British Summer Time, we 15 think, antedated this email. I hope I'm right about 16 that. 17 There's a reference in the email itself to "had 18 conversations with him today", so insofar as this 19 information is coming from anywhere, it's coming 20 apparently from those conversations, isn't it? 21 Was the position as regards the delay -- because 22 delay had accumulated by now, hadn't it? 23 A. Well, things were taking time, but I think -- sorry, 24 I think News Corporation thought there had been a delay, 25 yes. From our side of things, I think the Ofcom, OFT <p style="text-align: center;">Page 93</p> </p>	<p>1 A. I don't know whether our legal team were in the best of 2 moods at that stage. 3 Q. You would have known because this was a fairly 4 tight-knit office, you could have sensed the mood of the 5 place. People were getting a little bit fractious 6 weren't they, by this point? 7 A. Yes, I suppose they probably were. 8 Q. The very heated bit although it may be slightly 9 hyperbolic is not wide of the mark, is it? 10 A. Sorry, Mr Jay, this is which line? 11 Q. Third line: 12 "Everyone is getting very heated." 13 A. Okay. That might well have been not wide of the mark 14 but I can't remember. 15 LORD JUSTICE LEVESON: Well, Mr Michel is providing this 16 information back to his boss and the person he's talking 17 to is you and he's either making it up, and it's quite 18 difficult to see why he should make that up, or he's 19 reflecting what you're telling him. 20 A. It may have been Mr Michel telling me that they were all 21 getting heated and me making a remark like "Oh, yes, 22 same here or something". But yes, it could well have 23 been accurate but the reason I say "could" is because 24 I can't remember the conversation. 25 I think, as you say, you can infer that that was <p style="text-align: center;">Page 95</p> </p>
<p>1 and the outside legal advisers that had been asked to do 2 some work on it, were, you know, doing their work and it 3 was taking as long as it would take. 4 Q. But regardless of fault for the delay, the process, 5 which at one point looked as though it would be wrapped 6 up in the middle of February was still ongoing in early 7 June, and recriminations were flying about the place, 8 weren't they? 9 A. Yes, I think it's probably fair to say that I don't 10 think anybody expected it to take as long as it had 11 done, yeah. 12 Q. From the department's perspective, I'm sure the position 13 was "It's certainly our fault, it's someone else's 14 fault, let's blame Ofcom". 15 A. No, I don't think the department would have blamed 16 Ofcom, no. 17 Q. Who would they blame then if it wasn't going to be blame 18 internally? 19 A. I don't think the department or myself were blaming 20 anybody. As I say, I think at various stages either 21 Ofcom or the OFT or, in fact, when it was the department 22 that then brought in the outside legal advisers -- 23 Q. So the reference to everyone's getting very heated, his 24 own legal team is not in the best of moods, that must be 25 fantasy, if what you're saying is correct. <p style="text-align: center;">Page 94</p> </p>	<p>1 certainly the case, but I can't remember discussing it. 2 MR JAY: Where are you leaving us, Mr Smith, with that 3 particular paragraph? Are you inviting us to say, 4 "Well, I accept that this is probably what I said 5 removing some of the hyperbole", the very heated and 6 maybe just keep it at heated, or are you saying, "No 7 I don't recognise this"; can you assist us? 8 A. I think the -- I think if you tone it down a bit, 9 I certainly wouldn't -- I personally wouldn't have been 10 blaming anybody but I think the heated and everybody 11 working hard -- 12 Q. I'm sure you as a special adviser wouldn't have been 13 blaming anybody but you are reflecting on what others 14 within the department are doing, which is blaming 15 everybody. Isn't that the message that's coming out of 16 this? 17 A. I don't -- that may well be the message that this email 18 here suggests, but I don't think that the department was 19 blaming anybody. I can't remember the department 20 blaming anybody. 21 Q. It's pretty surprising if they weren't because this 22 process was, on one view, taking a long view, people 23 were saying, "Why is it taking so long", and it's human 24 nature in such circumstances not always to accept 25 full -- I'm not saying they should have done -- but to <p style="text-align: center;">Page 96</p> </p>

<p>1 blame someone else. Isn't that really what was going on 2 here? 3 A. I don't think at this stage the department was that 4 worried about the time that it took. I think News 5 Corporation were very frustrated and worried about the 6 time but I don't think that the department was -- 7 Q. That's not true either, Mr Smith. Look at the third 8 bullet point. 9 "He's politically very keen to get this done as 10 quickly as possible and understands the potential impact 11 this will have on the share price." 12 The longer this continued, the more political flak 13 the Secretary of State was going to take, are we agreed? 14 A. It would be sustained, yes, I suppose so. 15 Q. Are we agreed or not? 16 A. Well, he'd get lots of flak at the end of the decision 17 if it went one way or another, so I suppose the flak was 18 a sort of constant. 19 Q. And this must have been something that you and Mr Hunt 20 discussed privately, are we agreed? 21 A. We could have done. I don't recall him saying -- I mean 22 it was sort of self-evident that he was getting flak, 23 and it may well have come up if there had been 24 a particular article that had sort of had a go at him or 25 but I don't remember us, sort of, sitting down and -- Page 97</p>	<p>1 Secretary of State was keen to get it done quickly, and 2 then Michel might have said to you, "Do you know, this 3 is having an impact on the share price", and you say, 4 "Yes, I can see that, I can understand that"? 5 A. That -- 6 LORD JUSTICE LEVESON: Would that explain that sentence? 7 A. That is a fair explanation, I would say, yes. 8 MR JAY: I should really have dealt with the second bullet 9 point because it may be relevant: 10 "He puts OFT and Ofcom in the same bag when it comes 11 to blaming each other and delaying the process as much 12 as possible. He is not impressed by the OFT either." 13 Do you see that? 14 A. Yes. 15 Q. Was that your view? 16 A. No, it wasn't. I can imagine that Mr Michel may have 17 said OFT and Ofcom are delaying things and I may have 18 acknowledged that they thought that but my view of the 19 OFT and Ofcom throughout had been that -- well, the 20 limited contact that I'd had with them had been that 21 they were doing a very good job. 22 Q. It's possible, isn't it, Mr Smith, that Mr Michel came 23 back at you much harder than that, words to the effect, 24 "OFT and Ofcom are complete rubbish" or words to that 25 effect, he may have used an even more flamboyant term, Page 99</p>
<p>1 Q. But you were his special adviser, you've told us in your 2 statement that you were close to him, you had a very 3 good relationship. You would at least expect him to 4 empathise with you as the best person around to do so, 5 wouldn't you agree with that? 6 A. Yes, but as I say, I don't recall him ever saying to me 7 this is, you know, terrible, I can't cope with the flak 8 any more, or anything like that. 9 Q. I'm sure he wasn't saying that but what he was saying to 10 you is that this delay is aggravating, it is enhancing 11 the political flak, we need to get this over with for 12 political and other reasons and what's more it's 13 impacting on the share price. All of that must have 14 been the subject matter of conversation with you, don't 15 you agree? 16 A. I don't ever remember him saying anything about the 17 share price. I certainly don't remember ever having 18 a conversation with Mr Hunt about share price. We 19 certainly would have discussed that -- like I say, with 20 the other special advisers and other officials any 21 particular heat that he was taking. Yes, we would have 22 done. 23 Q. What about the 12th bullet point on this email -- 24 LORD JUSTICE LEVESON: Hang on, is the answer to the third 25 bullet point that he was entitled to pick up that the Page 98</p>	<p>1 and you may or may not have agreed with it. Do you 2 think that's possible? 3 A. Um -- I suppose it's possible that he may have done that 4 I'm not sure that I would have -- it's difficult to know 5 how flamboyant -- 6 Q. Let's unpick that a little bit more -- it was the 7 News Corp view that OFT and Ofcom were rubbish, wasn't 8 it? 9 A. Yeah, well, I think they -- I think News Corporation's 10 view of Ofcom, I think, is sort of quite widely known. 11 I'm not so sure what they thought of the OFT generally, 12 but it's fair to say that by this stage they were 13 definitely annoyed that it had taken both bodies and the 14 outside lawyers that the DCMS had got in so long to deal 15 with the issues, yes. 16 Q. So therefore he was seeking some sort of explanation for 17 the delay or at least expressing the view that the delay 18 is unacceptable and that was part of the agenda of your 19 discussions, wasn't it. 20 A. Yes, I'm sure you would have been saying that and 21 I would have acknowledged -- I would have listened to -- 22 that was may role, really, to be their sounding board, 23 in a sense. 24 Q. As a loyal special adviser in this department, you may 25 well have given him the impression that it's not our Page 100</p>

25 (Pages 97 to 100)

<p>1 fault, it's someone else's fault, do you accept that?</p> <p>2 A. I think the only time that that I can remember doing</p> <p>3 that is when I said that it is was News Corporation's</p> <p>4 fault for not responding quickly enough to Ofcom and the</p> <p>5 OFT.</p> <p>6 Q. I'm sure, in the course of formal emails and meetings,</p> <p>7 that a proper distance is attained at all material times</p> <p>8 but in the course of a 20-minute or so -- it's 19-minute</p> <p>9 26-second telephone conversations, someone with whom</p> <p>10 you've been in lengthy communication with over the</p> <p>11 preceding months, you're pretty friendly with now, that</p> <p>12 you're lapsing into indiscretion, Mr Smith, aren't you?</p> <p>13 A. I don't believe so. I may well have said "I can see</p> <p>14 your point, I understand what you're saying", but</p> <p>15 I wouldn't have lapsed into indiscretion, no.</p> <p>16 Q. The 12th bullet point:</p> <p>17 "At the end he said that, for him, being able to</p> <p>18 obtain a full green light on everything from Ed, which</p> <p>19 is Ofcom in the coming days and the easiest way to clear</p> <p>20 the process and then make a swift decision without</p> <p>21 facing any credible legal challenge."</p> <p>22 Taking that in two stages, as a proposition of fact,</p> <p>23 opinion and law, that was spot on, wasn't it?</p> <p>24 A. In that if everybody came back and advised Mr Hunt that</p> <p>25 these UILs were satisfactory, then he could accept them,</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. 3 June, the Friday afternoon.</p> <p>2 A. It's perfectly possible that I would have spoken to</p> <p>3 Mr Hunt on that Friday afternoon but I don't know</p> <p>4 whether my phone records show that I called him.</p> <p>5 Q. Is the position that, in relation to any particular</p> <p>6 email, unless there's evidence of a phone call out from</p> <p>7 you to Mr Hunt and we saw that on 9 February, didn't we,</p> <p>8 you're not really able to say one way or the other</p> <p>9 whether you had a conversation with Mr Hunt about</p> <p>10 a particular matter. Is that a fair summary of the</p> <p>11 position?</p> <p>12 A. I can remember a couple of the ones that I did have</p> <p>13 conversations with him and I think I mentioned when some</p> <p>14 of those emails were going around about the independent</p> <p>15 chairman of Sky News. I remember mentioning that</p> <p>16 particular issue to Mr Hunt. I'm trying to remember if</p> <p>17 there are any others. But I think most of the other</p> <p>18 ones were more to do with the sort of detail and the</p> <p>19 process that I wouldn't have felt necessarily the need</p> <p>20 to speak to Mr Hunt. I may, in passing, have said</p> <p>21 News Corp are getting frustrated it's taking so long for</p> <p>22 instance, but I don't remember doing so.</p> <p>23 Q. Do you remember on any occasion communicating a view</p> <p>24 that Mr Michel expressed to you back to Mr Hunt?</p> <p>25 A. I certainly remember the independent chairman issue,</p> <p style="text-align: center;">Page 103</p>
<p>1 yes.</p> <p>2 Q. That had been the position throughout but the easiest</p> <p>3 way to get this through was to bring Ofcom into the</p> <p>4 position whereby they could accept the UILs and that</p> <p>5 would reduce all the risks, both political and legal; is</p> <p>6 that correct?</p> <p>7 A. I'm not sure I would describe it as the easiest way to</p> <p>8 get it through, I don't think that was -- I think the</p> <p>9 process was they were looking at the undertakings in</p> <p>10 lieu and, if it got to the stage where they had decided</p> <p>11 that they were fine, then there would be no particular</p> <p>12 reason for Mr Hunt not to accept them.</p> <p>13 Q. Is it possible that you did say something along the</p> <p>14 lines that we read in paragraph 12?</p> <p>15 A. I may well have explained the process as I've just done,</p> <p>16 yes, which is a sort of version of that. I'm not sure</p> <p>17 I would have said "the easiest way", it's just that's</p> <p>18 the process we're following and that's the way it would</p> <p>19 happen.</p> <p>20 Q. If I were to alight on this particular email, having</p> <p>21 just taken you through it, do you happen to remember</p> <p>22 whether you had a discussion with Mr Hunt following the</p> <p>23 email or not?</p> <p>24 A. I don't remember. What day is it? My phone records may</p> <p>25 have --</p> <p style="text-align: center;">Page 102</p>	<p>1 yes, the idea that that was sort of a step too far for</p> <p>2 them, if you like.</p> <p>3 Q. That was the email back in February, I think, wasn't it?</p> <p>4 A. Yes, it was, I think, sort of, shortly after that,</p> <p>5 Mr Hunt wrote to Mr Murdoch and said, amongst other</p> <p>6 things, that that was something that he expected to see</p> <p>7 happen soon, yes.</p> <p>8 Q. That's the one of 11 February, the independent chairman</p> <p>9 one. Okay, 01792. You see:</p> <p>10 "Had a debrief with JH and team tonight at 7 pm</p> <p>11 before he left to his constituency."</p> <p>12 There's some text messages which relate to that.</p> <p>13 More importantly, was Mr Hunt involved in the</p> <p>14 discussions you had?</p> <p>15 A. This was the -- I believe this was the day that the</p> <p>16 responses to the first consultation and Mr Hunt's</p> <p>17 subsequent statement about there needing to be a second</p> <p>18 consultation, so he'd made a public statement today, so</p> <p>19 I would almost certainly have spoken to him after that</p> <p>20 to sort of find out how he thought it went and I'm sure</p> <p>21 that would have happened, yes.</p> <p>22 Q. I'm not sure I can take that one very much further.</p> <p>23 01794:</p> <p>24 "Spoke to JH. Very important to keep same briefing</p> <p>25 lines as discussed and insist on the plurality issue.</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 They are going very strong with journos today on the 2 strength of UIL and approval by Ofcom/OFT." 3 The text reads, his text to you: 4 "We are going to take some important steps today, 5 I will call you about it. It would be helpful if we 6 could both keep the same briefing line for the 7 consultation process on no link and very specific legal 8 decision." 9 The no link relates to the phone hacking issue, 10 I think, are you with me? 11 A. Yes, I believe so, yes. 12 Q. Then you text back: 13 "We are definitely doing very strong but this is 14 about plurality." 15 A. Yes. 16 Q. So this email does reflect your text, doesn't it? 17 A. It does, which I think, in turn, reflects what Mr Hunt 18 had said publicly on many occasions, that he was dealing 19 with this issue on the basis of plurality concerns. 20 Q. 01799. This is the 7 July email. We know from the call 21 records there was an 11 minute 8 second conversation. 22 You called Mr Michel at 17.35 hours and within half 23 an hour this email is sent by Mr Michel to 24 Mr James Murdoch. Do you follow me, Mr Smith? 25 A. Yes.</p> <p style="text-align: center;">Page 105</p>	<p>1 Q. Probable inference? 2 A. Possible. 3 Q. Unless there was someone else providing this information 4 ahead of the game, you're the only person we can 5 possibly look at for these purposes, I think. Would you 6 accept that? 7 A. I don't know who else -- I mean lots of other people 8 would presumably have known only far more than I would 9 have done by this stage because -- but I don't know 10 who -- 11 Q. Pretty confidential, I would have thought at this point, 12 what government thinking was. It would have been known 13 about, obviously within Number 10, the Cabinet Office, 14 people high up in DCMS and something that you knew about 15 because Mr Hunt might have shared it with you. Is that 16 fair? 17 A. I don't know that I did know about it, but he may well 18 have shared it, yes, but I don't remember at this stage. 19 Q. Had he shared this information with you, do you accept 20 that it's information which, I'm not saying that you did 21 impart it to Mr Michel, but you shouldn't have imparted 22 it to Mr Michel? 23 A. Yes, I would say so, yes. 24 Q. Which may explain why you're hesitant to agree with me 25 that you did impart it to Mr Michel --</p> <p style="text-align: center;">Page 107</p>
<p>1 Q. There is reference to two possible public inquiries, 2 which, at that stage, we believe does represent 3 government thinking on 7 July. The suggestion is that 4 the only source for this information could have been 5 you, and it ties in with what we know to be a fact, 6 namely the telephone call half an hour earlier. Would 7 you agree that or not? 8 A. I'm not sure that I would necessarily be the only source 9 of that information. I can't remember, at that stage, 10 whether I knew that that was the case. I may well have 11 done. 12 Q. You may well have done? 13 A. Yes, I may well have done but I can't remember whether 14 I did, but I think most of the discussions were -- most 15 of those conversations were being dealt with by 16 Number 10 but I don't know -- 17 Q. This wasn't in the public domain as yet, Mr Smith. 18 I think the simple point I'm making, and it may be more 19 a matter for inference, if you knew the facts set out in 20 the first bullet point, if you accept that there was 21 a conversation within half an hour of this email, one 22 possible inference, it may be a reasonable inference, is 23 that you're the source of the information we see in the 24 email. Would you agree with that? 25 A. I would agree that that is a possible inference, yes.</p> <p style="text-align: center;">Page 106</p>	<p>1 A. Well -- 2 Q. -- that would be natural, wouldn't it? 3 A. -- I don't remember imparting it, mainly because I don't 4 quite know that I knew it, which would make it quite 5 strange for me to be able to impart it. 6 Q. The penultimate bullet point: 7 "The cabinet divisions reported in the press are 8 much more to do with the hacking saga, rather than the 9 deal itself." 10 In a sense, that might have been self-efficient but 11 is it possible that you confirmed that to Mr Michel? 12 A. I wouldn't have been aware, any further than whatever 13 the press reportings on the Cabinet divisions were. 14 I've never attended Cabinet or spoken to any other 15 Cabinet Minister about it so that was either 16 self-evident from press coverage or something Mr Michel 17 was just putting down as fairly obvious. 18 Q. Did Mr Hunt ever share with you confidentially the 19 thinking of Number 10, thinking of Cabinet? 20 A. On this particular issue? 21 Q. Generally? 22 A. Generally? Yes, yes, he would discuss with me if he'd 23 been in meetings in Number 10 or I did quite often go to 24 meetings in Number 10 with him. 25 Q. The email that Mrs Brooks disclosed at RB 2, you</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 remember that one: 2 "JH is now starting to look into phone hacking 3 practises more thoroughly and has asked me to advise him 4 privately in the coming weeks and guide his and Number 5 10's positioning." 6 You deal with that in your witness statement but can 7 we be clear what your evidence is about that, please, 8 Mr Smith? 9 A. Yes, certainly. If this was a conversation with me, 10 it's quite possible that I asked him to let me know what 11 steps News International was taking in response to the 12 phone hacking situation, mainly because the department 13 is obviously responsible for the media sector, so that 14 would be interesting, but I would never have asked to be 15 guided, and I think this use of the word "privately" 16 again is one that I don't really sort of recognise 17 because if I'd asked him to send me statements they were 18 making about phone hacking, then he would have sent them 19 to me. I don't think that's privately. 20 Q. The point on "privately" is really the same point as 21 arises throughout this stream of communication. It may 22 be more one of perception, that from Mr Michel's 23 perspective he is having private conversations with 24 you -- I know you didn't see it in that way and in that 25 light -- and therefore he naturally puts the adverb Page 109</p>	<p>1 Q. Why did you say "unduly influence", though, in that 2 paragraph? 3 A. Well, it may well have been if he'd been constantly 4 badgered to the extent that I was, that might have got 5 to him. 6 Q. It didn't get to you then, Mr Smith? 7 A. It got quite annoying to me, yes. 8 Q. The other aspect of this is that not merely was it 9 irritating, possibly inappropriate, but also you may 10 naturally have divulged things which, really, with 11 hindsight, you shouldn't. Do you accept that? 12 A. I think, in hindsight, the tone of the language that 13 I used was not appropriate but I think in terms of the 14 content of what I said to Mr Michel it was all -- had 15 either been expressed to Mr Murdoch through meetings, 16 letters or was known to Mr Michel from the 17 correspondence they were having with Ofcom and the OFT. 18 Q. If all the conversations that you had with Mr Michel in 19 fact had taken place either with a civil servant or 20 Mr Hunt rather than you, do you think any issues of 21 perception or appearance of bias might arise? 22 A. If they'd taken place with a civil servant, I don't 23 think so, because I think the civil servants were in 24 some cases sending similar stuff, like the statements 25 and things like that, so I didn't think there was any Page 111</p>
<p>1 "privately" on everything when you felt you were having 2 an open and transparent conversation with him, so that's 3 the reality? 4 A. Yes, I suppose so, but for him to send the statements 5 that News International were making is not a private 6 matter as such. 7 Q. In paragraph 255 of your statement, page 09078, you 8 explain again that it was your role to act as buffer so 9 that there could be no suggestion that he was being 10 unduly influenced by the unrelenting lobbying of News 11 Corporation in relation to the bid? 12 A. Yes. 13 Q. Which suggests that you were entirely the recipient of 14 material which might unduly influence your Secretary of 15 State. Is that the point you're making? 16 A. Not material that I was necessarily -- because I can't 17 think -- the material that I received were lengthy 18 correspondence between Ofcom, the OFT and News 19 Corporation. I don't think that would -- I mean that 20 was just far too detailed, and Mr Hunt had outsourced 21 that work, if you like. It was more that it was me that 22 they were just sort of coming to for points of process 23 and what have you, so that Mr Hunt didn't need to bother 24 with that sort of thing after he's told them once in or 25 twice in a formal meeting. Page 110</p>	<p>1 difference between myself and the officials. I think we 2 had all taken the view that Mr Hunt should be kept out 3 of all of that sort of contact. 4 Q. But was this just a matter of convenience; in other 5 words, protecting your Secretary of State, who after all 6 had other things to do rather than speak to Mr Michel, 7 or is this a matter of the appropriateness of the 8 contact at all? Do you see the difference? 9 A. I do, and I think because he was the individual taking 10 the decision, I think that as well as the convenience 11 factor it was also important for him to be seen to be 12 only having some of those meetings with them, yes. 13 Q. Although he's constitutionally and legally responsible 14 for the decision, of course he can take advice on it 15 from within the department and possibly from you, was 16 that your understanding? 17 A. Yes. He could certainly have taken advice from -- 18 I mean as it happens, the advice that he wanted most was 19 from Ofcom and the OFT. 20 Q. Can I move on to the events of late April this year, 21 page 09078 of your statement. You had been warned out 22 of courtesy that evidence from Mr James Murdoch might be 23 relevant to the department, although you weren't told 24 anything about what the evidence was going to be, so the 25 position was you were watching it online; is that right? Page 112</p>

28 (Pages 109 to 112)

<p>1 A. On the TV, actually. I think it was broadcast live.</p> <p>2 Q. And you explain what your reaction was at paragraph 261</p> <p>3 of your statement:</p> <p>4 "The initial reaction on the evidence being</p> <p>5 presented was not the whole picture, there was a great</p> <p>6 deal of exaggeration and there were in fact relatively</p> <p>7 few emails from me to Mr Michel."</p> <p>8 But in terms of the paucity or otherwise of emails</p> <p>9 we know that there was a vast amount, frankly, text</p> <p>10 message and mobile phone contact between you and</p> <p>11 Mr Michel which preceded many of the emails we've looked</p> <p>12 at, is that fair?</p> <p>13 A. Yes.</p> <p>14 Q. You had a conversation with Mr Hunt after the evidence</p> <p>15 was given and after your initial review of the emails.</p> <p>16 Does it follow that you got hold of the emails online or</p> <p>17 by some other means?</p> <p>18 A. Yes, it was whenever the Inquiry put the KRM 18 and the</p> <p>19 schedule online, which I've put in my statement was at</p> <p>20 about 4.30, but that may be slightly wrong. I thought</p> <p>21 it was after the evidence had finished they went up</p> <p>22 online.</p> <p>23 Q. I think it's right, actually, because they were put on</p> <p>24 online immediately, so you're right about that, but the</p> <p>25 conversation must have been at about 5.30 or</p> <p style="text-align: center;">Page 113</p>	<p>1 him and the other special advisers to say that it was me</p> <p>2 doing my job and not to worry.</p> <p>3 Q. So there was a drink that evening in the office, you do</p> <p>4 give evidence as to that. How long did that last,</p> <p>5 thereabouts?</p> <p>6 A. 45 minutes maybe.</p> <p>7 Q. Was the mood fairly upbeat or not?</p> <p>8 A. No, not at all. It was very pressured and one of the</p> <p>9 most stressful days that I'd certainly had to deal with.</p> <p>10 Q. You say in 264 of your statement:</p> <p>11 "It was agreed that I'd just been doing my job."</p> <p>12 And you left the office at about 8.30 that evening?</p> <p>13 A. Yes. That was the reflection of the conversation</p> <p>14 between myself, the other special advisors and Mr Hunt,</p> <p>15 but that wasn't a relaxed sort of manner.</p> <p>16 Q. The following morning, you cover this in your statement,</p> <p>17 you say in paragraph 265 that there was a meeting which</p> <p>18 you weren't party to?</p> <p>19 A. I think I was aware it may have been one meeting or</p> <p>20 others, but Mr Hunt was certainly having meeting that I</p> <p>21 wasn't present at.</p> <p>22 Q. Then you had a meeting with Mr Hunt and you gave</p> <p>23 evidence about that in paragraph 265; is that right?</p> <p>24 A. Yes, that's right.</p> <p>25 Q. Can you remember precisely what he said?</p> <p style="text-align: center;">Page 115</p>
<p>1 thereabouts, is that it?</p> <p>2 A. Yes, I'd say roughly about that, yeah.</p> <p>3 Q. And you told Mr Hunt that if the pressure became so</p> <p>4 great that it would help if you resigned you would not</p> <p>5 hesitate to do so. Can you tell us exactly what his</p> <p>6 reply was?</p> <p>7 A. I can't remember verbatim but it was something along the</p> <p>8 lines of, "It won't come to that", but I couldn't say</p> <p>9 that that was exactly the words that he used.</p> <p>10 Q. Did you set out to him what your position was in</p> <p>11 relation to these emails, at least in essence?</p> <p>12 A. Yes. I mean essentially along the lines that I've said</p> <p>13 in the statement, that they were a one-sided reflection</p> <p>14 and in many cases exaggerated and that he, as in</p> <p>15 Mr Hunt, when he came before this Inquiry would be able</p> <p>16 to give a defence of them.</p> <p>17 Q. Well, you would be able to give a defence of them</p> <p>18 because you were party to the antecedent</p> <p>19 conversations --</p> <p>20 A. Yes. I suppose at that stage I didn't realise I would</p> <p>21 be appearing before the Inquiry.</p> <p>22 Q. No. Did Mr Hunt accept your explanation at that stage</p> <p>23 or not?</p> <p>24 A. Yes. It was sort of lots of discussions between</p> <p>25 especially when, as I say, later on I had a drink with</p> <p style="text-align: center;">Page 114</p>	<p>1 A. To the best of my recollection, "Everyone here thinks</p> <p>2 you need to go", is what he said, yes.</p> <p>3 Q. Was anything else said beyond that?</p> <p>4 A. We did discuss how we'd enjoyed working with each other</p> <p>5 and how it was going to be tough and it wasn't just</p> <p>6 a one-line conversation, no.</p> <p>7 Q. You make it clear that no one criticised your conduct;</p> <p>8 is that right?</p> <p>9 A. Yes. I didn't have anybody sort of sit me down and say</p> <p>10 anything specific like that, no.</p> <p>11 Q. I suppose the obvious question is and I suppose I should</p> <p>12 ask it: "No one was criticising you, but everybody</p> <p>13 thinks you need to go", or words to that effect; what</p> <p>14 did you think of that?</p> <p>15 A. Well, I think I was -- I thought by this stage that the</p> <p>16 perception had been created that something untoward had</p> <p>17 gone on and therefore, I mean, that was sort of why I'd</p> <p>18 offered my resignation the evening beforehand and,</p> <p>19 "Everyone here thinks you need to go", I suppose was in</p> <p>20 my mind confirmation that everyone else also thought</p> <p>21 that the perception had been created that something</p> <p>22 untoward had happened.</p> <p>23 Q. Then a resignation statement, as it usually is, is</p> <p>24 prepared, and in paragraph 266 you explain that there</p> <p>25 was one revision to the statement with which you were</p> <p style="text-align: center;">Page 116</p>

29 (Pages 113 to 116)

<p>1 not happy; is that right?</p> <p>2 A. That's right, yes.</p> <p>3 Q. Could you tell us about that, please?</p> <p>4 A. It was a suggestion that the first line was changed to</p> <p>5 "While I believed it was my role to keep News</p> <p>6 Corporation informed", I objected to the word "believed"</p> <p>7 because it had been self-evident and the department had</p> <p>8 known that that's what my role had been, so I didn't</p> <p>9 want that word included.</p> <p>10 Q. And the department agreed with that since the final</p> <p>11 version of the statement does say:</p> <p>12 "While it was part of my role to keep News</p> <p>13 Corporation informed ..."</p> <p>14 A. Yes.</p> <p>15 Q. Do you know who it was who suggested that amendment?</p> <p>16 A. I think the emails that I got from the emails, which</p> <p>17 I've put in one of those bundles, shows that it came</p> <p>18 from the Cabinet Secretary's office.</p> <p>19 Q. So not from DCMS; is that right?</p> <p>20 A. No. And actually the Permanent Secretary who brought me</p> <p>21 that statement, when I said I want "believe" removed, he</p> <p>22 agreed that that was the right thing to do.</p> <p>23 Q. So the Permanent Secretary showed no resistance to you</p> <p>24 wanting to revert to the original text, the steer had</p> <p>25 come from elsewhere, is that it?</p> <p style="text-align: center;">Page 117</p>	<p>1 LORD JUSTICE LEVESON: Right. We'll have the hour now.</p> <p>2 Thank you.</p> <p>3 (12.45 pm)</p> <p>4 (The luncheon adjournment)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 119</p>
<p>1 A. That's my understanding -- I didn't know that at the</p> <p>2 time. From looking at the emails afterwards, that's my</p> <p>3 understanding of it, yes.</p> <p>4 Q. Then finally you refer in paragraph 268 to the letter</p> <p>5 Mr Stephens wrote to you on 25 April?</p> <p>6 A. Yes.</p> <p>7 Q. You're described as:</p> <p>8 "Undoubtedly the best and the straightest."</p> <p>9 This is of all the special advisers he's seen.</p> <p>10 "You've worked smoothly and professionally ...</p> <p>11 you've given great service to Jeremy ... how you left</p> <p>12 today was characteristic of the selfless and</p> <p>13 self-effacing way that you've approached your role."</p> <p>14 And that's where it's left, really, isn't it,</p> <p>15 Mr Smith?</p> <p>16 A. Yes.</p> <p>17 Q. Is there anything else you wish to add to the evidence</p> <p>18 you've given on these matters?</p> <p>19 A. No, thank you.</p> <p>20 LORD JUSTICE LEVESON: All right. Mr Smith, thank you very</p> <p>21 much.</p> <p>22 A. Thank you.</p> <p>23 MR JAY: Sir, the next witness is coming at 2 o'clock.</p> <p>24 LORD JUSTICE LEVESON: Right. Can we say 1.45 pm?</p> <p>25 MR JAY: I think we probably can.</p> <p style="text-align: center;">Page 118</p>	

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