

[redacted]

From: AMOS, Stephen
Sent: 12 July 2011 15:41
To: OLDFIELD PAUL; PATEL RITA; SMITH, Adam; [redacted]
Subject: RE: PM Speech

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2. The risk which we are trying to mitigate here is the risk that, down the line, others will be able to assert that Jeremy did not have an open mind when discharging the quasi-judicial function which Parliament has conferred on him – in legalese, his discretion was fettered.
3. As we all know but it bears repeating, this is only a vote in one house of Parliament and does not change anything legally. After the vote, Jeremy's obligations and decision making role under the Enterprise Act will be unchanged.
4. The version of the motion which we have seen is not directed towards Jeremy but rather at News. If it were directed at him and said that - e.g. - in no circumstances could he approve the merger, then we would want to make representations to Speaker's Counsel about the propriety of such a motion which flew in the face of the law. We are not in that territory.
5. Back to the risk in para 2, the key point is that Jeremy should not vote. Were he to vote in favour, and then subsequently to block the merger after the CC reference, it would be very difficult indeed to defend a JR alleging that his mind was closed on the subject. For the same reasons he should not speak in the debate. As he said rather nicely yesterday he is the only member of the House who is not permitted to air an opinion about this merger, although he is of course free to attend and listen to all exchanges – he could make a virtue of doing that by saying that he is of course keen to hear the full range of points being made. For the record he should make some kind of statement somewhere explaining why he has decided not to participate – i.e. because he has a statutory role to perform in relation to this transaction. He may need to point to this at some point in the future.
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Happy to discuss further.

Stephen

From: OLDFIELD PAUL
Sent: 12 July 2011 14:58
To: PATEL RITA; SMITH, Adam; AMOS, Stephen; [redacted]
Cc: AMOS, Stephen
Subject: RE: PM Speech

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I suggest that a vote where the PM and DPM are the sponsors looks rather like a statement of govt policy and not very different from a whipped vote (although we are into arcane parliamentary procedures rather than law here). It certainly raises the risk to a level higher than that posed by statements to the media such as those already made by the PM and DPM.

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Stephen Amos
Director – Legal
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH



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Paul Oldfield
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[Redacted]

From: OLDFIELD PAUL
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To: AMOS, Stephen; PATEL RITA; SMITH, Adam [Redacted]
Subject: RE: PM Speech

For the record I talked Simon King through this and gave him two options – free vote and Government supported vote.

They've decided on the Government vote, cognisant of the increased risks of JR. I've explained that Jeremy cannot vote, cannot take part in the debate, and we'll be finding a way to issue some statement to mitigate JR risk in the future about the fact that he remains open minded and has decided not to take part in the vote.

Paul.

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[Redacted]

From: OLDFIELD PAUL
Sent: 12 July 2011 16:30
To: [Redacted]
Cc: BEEBY, Sue; SMITH, Adam; PATEL RITA [Redacted]
Subject: RE: [UNCLASSIFIED] [Non-Record]
Attachments: PM Draft Speech v2.DOCX

[Redacted]

Our strong advice is that we don't dial this up any further on the bid or the process. It backs Jeremy into a v difficult corner and potentially exposes the Govt to JR. Attacking News Corp for alleged wrong doing is fine but pre-supposing what the CC will think, what they'll take into account or what SoS will decide puts us in v difficult territory.

I've suggested two minor amends in the attached which are important to us

- Removing immediate effect. SoS said it yesterday but whilst we have written to the CC to tell them we are referring the exact legal framework for doing so is complex and CC have told us we need to talk some time to get that right. Toning that down would help.
- Changing I to we helps us slightly with JR risk. It doesn't change the sense of what you want but helps us.

Paul.

From: [Redacted]
Sent: 12 July 2011 15:56
To: OLDFIELD PAUL
Subject: FW: [UNCLASSIFIED] [Non-Record]

As discussed. Please could I have something by 4.20...?!

Thank you!

From: [Redacted]
Sent: Tuesday, July 12, 2011 03:32 PM
Subject: [Redacted]

BSkyB BID

Let me turn to the specific issue of the BSkyB bid.

Mr. Speaker, despite the police investigation being underway and the public inquiry soon to be up and running...

...we are still hearing shocking allegations by the day.

Allegations that Royal Protection Officers were in the pay of the *News of the World* – that they handed over the contact details of the Royal Family for a profit.

Allegations that the former Prime Minister, Gordon Brown, had his bank details hacked into, and unforgivably, his child's medical records taken too.

And this time, the alleged culprits were not the *News of the World*, but other News International titles.

Mr. Speaker, as both the nature of the malpractice, and the scope of the newspapers involved, widens...

...it is right that the police continue to follow their enquiries and the evidence wherever it takes them.

It is also simply unrealistic to expect both the public and indeed politicians to separate all this from News Corporation's proposed takeover of BSkyB.

Yes, government is subject to the law of the land – and the proper legal processes for takeovers and mergers must be followed.

But that doesn't mean we cannot express a view.

That's why it is right for this House to have this debate.

And it's why I have made my opinions clear.

If I was running this company right now, with all the problems, difficulties and mess there is, I'd get my house in order first before thinking about the next corporate move.

At the same time, we are also making sure we are following due legal process.

Yesterday, because News Corporation withdrew their Undertaking in Lieu, my Right Honourable Friend, the Secretary of State for Culture, Media and Sport referred the bid to the Competition Commission with immediate effect.

The relevant authorities will have the time to take a look at all the issues...

...and come to a considered and exhaustive decision on whether this takeover should proceed.

It will then be up to the Secretary of State to decide in a quasi-judicial capacity.

For those looking for an indefinite delay, until the criminal investigations are over, let me remind them:

The legal requirements for conduct of a takeover were set out in the 2002 Enterprise Act – an act passed by the last government.

It makes clear that there can be no delay in this judicial process for extraneous reasons.

Let me also remind members opposite, that the only reason we can even consider plurality is not because the last government proposed this in the Bill...

but because the House of Lords amended the Bill to insist it was considered.

The Secretary of State has scrupulously stuck to his quasi-judicial role and the rules set out in the Enterprise Act.

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