[redacted]

[redacted] sent me this internal Sky memo ([Chest] not to ask where it came from). I've got a few questions on their reading of the detail.

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Pt 1

1. The 20:20 rule.
It's correct to say the SofS has powers to amend this by Order. Even if she did, however (and I've heard nothing of it - what James Purnell said some time ago seems irrelevant) the 15% limit on total TV audience would seem to rule out a bid for Carlton or Granada until after the Bill.

2. Foreign Ownership Rule
We've discussed this, and agreed it would have to be proven that News Corp didn't control BSkyB.
Sky are saying that by allowing them to provide DTT programme services, the ITC have already indicated that they think Sky are independent of News Corp.

However, in my reading, Part II, 1.(2)(i) of Sch. 2 removes digital TV from the scope of the foreign owner ban.
In any case, the para they quote, para 11 of Part IV to Sch. 2, doesn't deal with 'control', as Sky suggest. It only seems to say that a broadcaster linked to a newspaper proprietor could be denied ownership of digital services if the ITC felt that such ownership could act against the public interest (whether or not the newspaper group 'controlled' the affairs of the company.

What's your view? (Do you have time to offer it this week?)

Thanks, [redacted] ([illegible]4)

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memo

To [redacted] From [redacted] Date 29 November 2001

Re: Media Ownership Rules

As discussed, this note describes the broad impact on Sky of two of the current restrictions on media ownership.

In summary, the 20:20 Rule currently prevents Sky owning more that 20 per cent of a Channel 3 licensee or Channel 5. The recent Consultation on Media Ownership Rules invites views on whether provisions, such as the 20:20 Rule, should be retained. The Foreign Ownership Rule, which is likely to be retained, does not impose any restriction on Sky.

1. The 20:20 Rule

A proprietor of national newspapers with a combined national market share of 20 per cent or more (e.g. News Corp.) cannot be a participant with more than a 20 per cent interest in a Channel 3 licensee or Channel 5.[1] This is the "20:20 Rule".

The expression "more than a 20 per cent interest" is defined as holding more than 20 per cent of the shares in the relevant company or possessing more than 20 per cent of the voting power in that company.[2]

There is a further limb to the 20:20 Rule which catches Sky. That is, a company (e.g. Sky), in which a person who runs national newspapers with a combined national market share of 20 per cent or more (e.g. News Corp.) is a participant with more than a 20 per cent interest, cannot be a participant with more than a 20 per cent interest in a Channel 3 licensee or Channel 5. The Secretary of State has a statutory power to amend these percentages without the need for new Primary Legislation.

For the record, shortly after Carlton made its bid for UN&M and Granada made its bids for both Carlton and UN&M, Irwin and I met with James Purnell. He confirmed that the Government would not rely on the 20:20 Rule to block a takeover bid by Sky for a Channel 3 licensee (and one

1 Paragraph 5 (i) of Part IV of Schedule 2 to the Broadcasting Act 1990.
2 Paragraph 6 of Part I of Schedule 2 to the Broadcasting Act 1990.

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would assume that the same approach would apply to Channel 5). James anticipated that any such bid by Sky would be referred to the Competition Commission (as was the case with bids by the ITV companies for each other). Assuming that the Competition Commission did not find such a bid by Sky to be against the public interest, the Secretary of State would use the statutory power to amend the 20:20 Rule to ensure that it did not block that bid.[3]

2. The Foreign Ownership Rule

Companies that are formed under the law of a country other than a Member State of the European Economic Area cannot hold a Channel 3 licence or the Channel 5 licence.

Similarly, companies that are controlled by such 'foreign' companies cannot hold a Channel 3 licence or the Channel 5 licence.

These restrictions on foreign ownership do not impact upon Sky as it is a UK PLC and is not controlled by a foreign company. Three examples of the consideration of this issue by 'regulatory' authorities are as follows:

- At present, SGN (which is a foreign company) owns approximately 37 per cent of Sky and is able to appoint a number of directors to the Board. In order for the Board to be quorate and to conduct the business of the company at any Board meeting, the aggregate number of SGN appointees and Sky executives at the meeting must be less than half of the total number of directors present. These arrangements are consistent with the Combined Code of the London Stock Exchange Listing Rules which require the Board to be balanced so as to ensure that no group of individuals (e.g. the SGN appointed directors) can dominate the Board's decision making.

- The ITC has indicated that it does not consider Sky to be controlled by SGN/News Corp. If the ITC had considered Sky to be controlled by SGN/News Corp., it could have prevented Sky broadcasting services on DTT following a public interest test.[4] In practice, the ITC did not even conduct such a test before awarding DTT licences to Sky.

- When the Merger Task Force of the European Commission investigated Sky's investment in KirchPayTV, it did not conclude that News Corp. controlled Sky.

[3] Paragraph 5 (5) of Part IV of Schedule 2 to the Broadcasting Act 1990.
[4] Paragraph 11 of Part IV to Schedule 2 to the Broadcasting Act.