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Dear John

### **NEWSCORP/BSKYB CASE – PUBLIC INTEREST INTERVENTION**

Thank you for your letter of 9 November in which you requested information about the reasons underpinning the Secretary of State's decision to intervene in respect of News Corporation's proposed acquisition of the 60.9% of shares in British Sky Broadcasting Group ("BSkyB") which it does not already hold.

The Secretary of State's decision reflects his belief that it is or may be the case that the public interest consideration specified in section 58(2C)(a) of the Enterprise Act 2002 ("the public interest consideration") is relevant to a consideration of the proposed merger. The public interest consideration is concerned with the need to ensure that there is a sufficient plurality of persons with control of media enterprises serving every different audience in the UK.

Your previous submissions addressed to the Department of Business, Innovation and Skills ("BIS") set out News Corporation's arguments against intervention in this case. BIS has received submissions from other entities which expressed arguments to the effect that the merger would give rise to outcomes which would have significant negative consequences for the sufficiency of plurality of persons with control of media enterprises.

Having considered all of the submissions received, the Secretary of State considered that it was or may be the case that the public interest consideration was relevant to a consideration of the merger. The Secretary of State considered, therefore, that it was appropriate to require Ofcom to undertake an initial investigation, enabling the substantive arguments to be explored more fully. Ofcom's report and other representations may then be taken into account by the Secretary of State in deciding whether or not to refer the transaction to the Competition Commission for fuller investigation.

BSkyB is one of the main providers of broadcast news in the UK, operating the Sky News television channel and website and also supplying news content to Channel 5 as well as the majority of the UK's most significant commercial radio

stations, having recently won the contract to supply news content to Independent Radio News. News Corporation owns News International whose newspaper titles represent a substantial proportion of the market for national newspapers in the UK. Although News Corporation already has a significant shareholding in BSkyB, it is possible that the acquisition of the remaining 60.9% of shares, so that News Corporation is the sole shareholder in BSkyB, will have a relevant impact on the sufficiency of plurality of persons with control of the media enterprises serving UK audiences. As a result of the merger, News Corporation will be the only shareholder whose interests BSkyB will need to consider and News Corporation will have total control of BSkyB.

You have already seen the submission to the Secretary of State from Enders Analysis and a draft submission from Slaughter & May that was submitted on behalf of a group of media organisations. These papers encapsulate the arguments that were put forward as to why the proposed merger may be expected to give rise to outcomes that are adverse to the public interest, and which the Secretary of State took into account. The Secretary of State also took into account all of the submissions received on your behalf. All the substantive submissions received by the Secretary of State have been forwarded to Ofcom to assist it in undertaking its investigation and preparing its report.

You suggest that the Secretary of State's decision departs from the published Guidance on use of the power to intervene in media mergers. Your previous submissions referred to the statement in the Guidance that intervention would generally be considered only in cases where previously applicable statutory media ownership rules would have prevented the merger had they not been removed by the Communications Act 2003.

As paragraph 1.7 of the Guidance makes clear, the Guidance is not a substitute for the provisions of the Enterprise Act 2002. Whilst the guidance is intended to provide an indication of how the media public interest merger regime will operate in practice, and the approach the Secretary of State is likely to adopt in considering cases, each transaction will be looked at on its merits on a case-by-case basis. The Secretary of State has taken into account the Guidance, but applying the statutory test for intervention, he considers that the circumstances of this case warrant his intervention.

In any event, whilst the Secretary of State does not consider any previously applicable media ownership rules would have applied to this transaction, the Guidance sets out a list of exceptional circumstances in which the Secretary of State may consider it necessary to intervene in cases where media ownership rules did not previously apply. In this respect paragraph 8.8 of the Guidance should be noted, which provides that at the time of publication of the Guidance, the Secretary of State was not "currently aware of any other types of cases in which exceptional circumstances might arise". This indicates that the list of exceptional circumstances encapsulated such circumstances which the Secretary of State foresaw at the time of publication of the Guidance which might warrant his intervention, but was not necessarily exhaustive.

Further, the Guidance states in paragraph 8.8 that a situation where a large number of news channels were coming under single control is a case in which exceptional circumstances might be considered to arise. In view of the fact that this merger involves a situation in which several significant sources of news

Continuation 3

would be coming under common control, the Secretary of State considers that this merger is at least akin to paragraph 8.8 of the Guidance in that the same or similar concerns may arise in the circumstances of this merger. The Secretary of State is satisfied that exceptional circumstances warrant his intervention in this case.

Kind regards

A thick black horizontal line redacting the signature of Andrew Rees.

**ANDREW REES**  
Deputy Director, Consumer and Competition Policy