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Dear John

NEWSCORP/BSKYB CASE – PUBLIC INTEREST INTERVENTION

1. I refer to your letter of 22nd November.
2. Decisions to intervene in mergers on public interest grounds under section 67 of the Enterprise Act 2002 are taken on the basis of whether the Secretary of State believes it is or may be the case that a specified public interest consideration is relevant to a consideration of that merger. This is the decision which the Secretary of State has taken. As you are aware, he has decided that it is or may be the case that the media plurality public interest consideration is relevant to a consideration of the proposed transaction.
3. The decision to intervene under section 67 must be distinguished from the decision the Secretary of State must subsequently take under article 5 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 on whether or not to make a reference to the Competition Commission. I can confirm that the latter decision (which inter alia requires the Secretary of State to assess whether a public interest consideration mentioned in the intervention notice is relevant to considering the transaction and whether, taking account of that public interest consideration, it is or may be the case that the contemplated merger would operate or may be expected to operate against the public interest) has not yet been taken by the Secretary of State.
4. We are satisfied no legal error has occurred in deciding to intervene in this case. The case for intervention in any merger must be considered by reference to the relevant statutory provisions and the specific circumstances of that individual case. The Secretary of State has intervened in this particular merger because he believes it is or may be the case that the media plurality public interest consideration is relevant to a consideration of the proposed transaction.
5. In taking the decision to intervene in a merger on public interest grounds, the Secretary of State does not need to determine finally the merits of any particular substantive argument as to whether a merger may give rise to effects adverse to the public interest. In this case, he is satisfied there are credible arguments on the matter that may not be dismissed at this stage and that merit fuller investigation. The

existence of uncertainty as to the merits of any particular argument in no way precludes making such an intervention.

6. We expect the parties to make representations to Ofcom about the merits of whether the merger may in fact be capable of giving rise to effects adverse to the public interest. We assume those representations will include arguments as to whether the fact that Sky provides news content to other broadcasters should be considered relevant to a consideration of the merger's potential impact on the sufficiency of plurality. These arguments will then be taken into account in reaching a decision on whether to make a reference to the Competition Commission. We do not understand you to be suggesting that either BSkyB or News Corporation are not media enterprises within the meaning of the Enterprise Act.

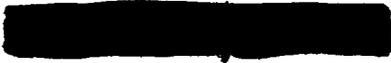
7. You state that you do not accept that this transaction is analogous to that cited in paragraph 8.8 of the Guidance. For the reasons set out in our letter of 22 November 2010, the Secretary of State considers it is in some relevant respects, analogous. In any event, as previously explained, the published guidance is not a substitute for the legislation, although it is important and has been taken into account in reaching decisions on whether to intervene in media mergers.

8. As paragraph 7.7 of the Guidance explains, section 58(2C)(a) is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality. It should be noted in this regard that "media enterprise" means not just an enterprise that consists in or involves broadcasting (section 58A(1)) but also a newspaper enterprise where a merger involves a broadcaster (section 58A(2)).

9. Both the parties involved in this present merger are significant sources of news. News produced by Sky is broadcast by a large number of other television channels and radio stations. In deciding whether or not to issue an intervention notice in this case, the Secretary of State did not need to reach any final conclusions as to whether or not this latter fact means Sky influences the content of the news bulletins of other broadcasters or whether, for the purposes of considering the sufficiency of media plurality, this means that the merger would or may increase News Corporation's ability to influence opinions and control the agenda. On the basis of information provided to the Secretary of State, a credible argument might be made that it does. It is one of the substantive matters that can now be subject to more in depth analysis.

10. You compare the decision to intervene in respect of News Corporation's proposed acquisition of 100% of the shares in BSkyB Group with the Secretary of State's approach to Northern & Shell's recent acquisition of Channel 5. The Secretary of State carefully considered the respective merits of each individual case. His decision to intervene in relation to the former case reflected his belief that public interest considerations were or may be relevant to consideration of this particular transaction.

Kind regards



ANDREW REES
Deputy Director, Consumer and Competition Policy