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Your Ref 0012561-0000367
CO:13326012.9

Our Ref

24 January 2011

Dear Antonio

News Corporation – British Sky Broadcasting Group Plc

Thank you for your letter of 24 January 2011.

I note that draft undertakings will be received in these offices shortly.

We have taken on board the representations you made as to process, both at your meeting with the Secretary of State, and at our meeting on Friday. We understand that you are concerned that the process be transparent, expeditious and legally sound. The Secretary of State shares those concerns entirely.

Turning to the specific matters you raise:

Role of the OFT

We agree that the Secretary of State is not obliged, but has a discretion, to involve the OFT in process of consideration of undertakings. However, we do not agree that section 93 is as prescriptive as your letter implies. We do not read the section as requiring the Secretary of State to take an "in principle" decision to accept a proposal you have made before the OFT could become involved. Nor do we understand the basis for any suggestion that the OFT can only be involved in "issues regarding the implementation" of any UIL's, that does not seem to us consistent with the wording of s.93.

In addition, we would note that your reference to the words "...undertakings which [the Secretary of State] would be prepared to accept..." as support for an interpretation that the OFT can only be involved after an "in principle" decision seems to us not to recognise the impact of the directly preceding words of that sub-section: it is clear from them that the OFT can be required to consult with a view to discovering whether a person will offer such undertakings.

We consider that the statutory scheme permits the Secretary of State to take the view that he should consider whether to accept the undertakings your client has offered and allows him to

involve the OFT in that process of consideration. If the Secretary of State reaches a position that he proposes to accept the undertakings in lieu of a reference, he will, of course, put them out for consultation as required under the terms of the Enterprise Act.

Role of Ofcom

We were not entirely sure we understood your observation that Ofcom does not have any defined statutory role in relation to undertakings. We consider that accepting any undertakings in lieu of a reference would amount to the taking of enforcement action by the Secretary of State and, as such, would fall within the scope of s.106B of the Enterprise Act (read with the Legitimate Interests Order). On that basis it would seem to us that the Secretary of State is clearly permitted to seek Ofcom's advice.

Quite apart from the statutory powers, however, it seems to us that there is a real benefit in understanding the views of Ofcom (and the OFT) in relation to any proposals you are making. It would seem to us that understanding those bodies' thoughts earlier rather than later in the process will ensure that any undertakings the Secretary of State might be minded to accept would be more fully worked out and any potential difficulties dealt with. Equally, if they raised concerns that the undertakings were unworkable or insufficient, it would, again be better to know sooner.

Publication of the Ofcom report

As we discussed on Friday, the Secretary of State is required to publish the Ofcom report either on or before publication of his own decision on whether to refer a transaction subject to a European Intervention Notice. We do not accept that a decision to publish the report in advance of a substantive decision would harm the process. It is clearly envisaged by the statutory regime. In the present case the Secretary of State considers such a step appropriate.

Conclusions

You have asked that we confirm whether the Secretary of State is minded to publish Ofcom's report in advance of the publication of any decision he may make in principle on the undertakings offered by your client. We can confirm that it will be published tomorrow and we have already had contact with News Corporation and indicated that to them. You indicated that upon such confirmation, you will provide a non-confidential bundle of News' submissions for publication alongside that report.

In relation to your final question, we can confirm that the Secretary of State is concerned that the requirements of due process under the statutory scheme are complied with and will, therefore, ensure that if he proposes to accept undertakings in lieu from News Corporation, he will consult on those undertakings in line with the statutory procedure.

I also confirm receipt of your second letter of today's date, which enclosed the confidential version of your client's submissions.

Yours sincerely

Victoria Kaye