

CONFIDENTIAL



21 February 2011

Jeff Palker
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Steve Unger
Partner, Strategy, Chief Economist and Technology



Dear Jeff,

News Corporation / BSkyB merger: questions on the revised UILs

On 17 February, the Secretary of State informed us that he had received assurances from News Corporation that you are prepared to meet all the outstanding matters set out in Ofcom's report and in the OFT's report. We have received a copy of the updated draft undertakings in lieu (UILs) you submitted on 16 February. The Secretary of State asked us to work with you to agree a set of UILs to enable him to make a final decision, taking into account our further recommendations, whether or not to accept those UILs.

We have carefully considered the updated draft UILs in the context of the plurality concerns identified in our 31 December report, and of the package of governance matters identified in both our letter to you of 9 February and our letter to the Secretary of State of 11 February.

In this context, we have the following questions on the updated draft UILs:

1. As explained in our letter to the Secretary of State of 11 February, we believe that a transparent mechanism should be in place to ensure editorial integrity and independence of Sky News is at the heart of the Newco Board's work. Our proposal was for the establishment of an editorial committee of the Board to fulfil this function, but we noted that this same function could be achieved in a number of ways. The revised UILs (under clause 3.1.viii) provide instead for the establishment of a corporate governance and nominations committee. Can you elaborate on how this committee would fulfil the same function as the editorial committee we outlined? In particular, can you provide specific details on the following points:

1.1 We envisaged that the terms of reference of the proposed editorial committee would include

- a. hiring, firing or replacement of the Sky News Editor (including any material changes in terms and conditions which could give rise to constructive dismissal); and

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- b. any changes to the authority, reporting relationship and consultation rights of the Sky News Editor.

We note you propose that the appointment or removal of the head of Sky News must be approved by the Board of Newco. However, the revised UILs do not specify any particular arrangements in relation to changes in his/her role. Can you confirm whether you propose that changes in the his/her role would be approved by the Board of Newco, the corporate governance and nominations committee or some other governing body.

- 1.2 Our proposal for an editorial committee of the Newco Board envisaged this committee would take responsibility for the hiring, firing and replacement of all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal). The draft UILs define Key Sky News Editorial Staff as the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News. Can you clarify which governing body would be responsible for appointing these roles?
- 1.3 In our proposal for an editorial committee, we indicated our expectation that the Chair of this committee would be an independent director with senior editorial experience and expertise. How do the proposed UILs provide the same degree of protection for plurality?
2. Can you explain how clause 3.2 of the draft UILs, which contains News Corporation's commitment to vote against any proposed change to Newco's articles of association which would remove the corporate governance provisions provided for in sections 3.1 (ii) to 3.1 (viii) would provide security that the articles of association will not be amended, given that News Corporation appears to propose that the commitment should fall away if either:
- a single shareholder group owns more than 50% of the voting shares in Newco; or
 - News Corporation has the right to vote 25% or less of the shares in Newco.
3. Do you anticipate that the text of Newco's articles of association and the terms of reference for the corporate governance and nominations committee concerning editorial independence and integrity would require prior approval by the Secretary of State?
4. Within our letter to the Secretary of State, we outlined the importance of embedding provisions relating to governance in Newco's constitutional documents. Would News Corporation consider entrenching the provisions of Newco's articles of association relating to editorial independence and integrity to the effect that these provisions may

only be amended or repealed if conditions more restrictive than those applicable in the case of a special resolution are met?

If you wish to propose any changes to the draft UILs in light of your responses to the questions above, can you please provide a revised draft with those changes incorporated

Please note that in the context of assisting the OFT with its advice to the Secretary of State there are other issues which we consider to be significant which we understand the OFT are intending to address with you, and this letter does not therefore cover any of those.

The Secretary of State has requested our advice by Thursday 24 February. We therefore need a response from you by the end of tomorrow.

Yours sincerely

A black rectangular redaction box covering the signature of Steve Unger.

Steve Unger

cc. *Andrea Appella, News Corporation*
Antonio Bavasso, Allen & Overy
Sheldon Mills, Office of Fair Trading