

ALLEN & OVERY

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BY EMAIL ONLY

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22 February 2011

Dear Steve

News Corporation/BSkyB merger UILs

I refer to your letter to News Corporation (**News**) of 21 February 2011 in which you set out further questions on the revised draft UIL submitted by News on 16 February.

Please find attached News' response to the questions raised, together with a revised draft of the UIL showing proposed changes marked against the version submitted on 16 February 2011.

Should you have any questions, we look forward to discussing these with you at your earliest convenience.

Yours sincerely



Antonio Bavasso
Partner

cc:

Sheldon Mills – Office of Fair Trading; Jeff Palker and Andrea Appella - News Corporation; Cerry Darbon and Dominic Long - Allen & Overy LLP

News Corporation

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

RESPONSE TO OFCOM QUESTIONS OF 21 FEBRUARY 2011 RE REVISED UIL PROPOSAL

News Corporation (News) sets out below its response to the questions contained in Ofcom's letter of 21 February 2011.

Unless expressly stated otherwise, defined terms in this letter have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**) and in its response to the OFT's questions of 7 February (the **Second OFT Response**).

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
- 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.

News is willing to provide that any material changes in terms and conditions which could give rise to constructive dismissal, and any material changes to the authority or reporting relationship of the head of Sky News (i.e. the Sky News Editor) must be approved by the board of Newco.

News does not understand the meaning and relevance of the reference to consultation rights.

Please see section 3.1(vi) of the attached revised draft UIL (the **Second Revised Draft UIL**).

- 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?**

News' intention is for the head of Sky News to have responsibility for the appointment of the executive editor of Sky News and the head of newsgathering at Sky News, as is currently the case.

Please find attached News' response to the questions raised, together with a revised draft of the UIL showing proposed changes marked against the version submitted on 16 February 2011.

Should you have any questions, we look forward to discussing these with you at your earliest convenience.

Given that the appointment of the head of Sky News is to be approved by the board of Newco, the majority of which will be independent and which will be chaired by an independent Chairman, News considers that this is entirely appropriate.

- 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?**

In response to Ofcom's request, News has agreed to establish a Corporate Governance and Nominations Committee which will oversee corporate governance provisions, principles of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code. As set out in section 3.1(viii) of the UIL, the Corporate Governance and Nominations Committee will have a majority of independent directors, will be chaired by an independent director and will include at least one independent director with editorial and/or journalistic expertise. The Corporate Governance and Nominations Committee which will consist of a majority of independent directors will have the power to determine which of those independent directors is appointed chairman.

News has also committed that the board of Newco will comprise a majority of independent directors and that one of those independent directors shall be chairman of the board of Newco (see further News' response to question 2 below).

Ofcom acknowledged at paragraph 22 of its Report to the Secretary of State of 11 February that there were a number of ways in which editorial issues could put at the heart of the board's function and that plurality could be protected.

News considers that it has responded to all of Ofcom's key concerns and believes that these commitments provide far more than adequate protection for plurality. News also believes that the most appropriate body to determine which of the independent directors would be most suitable to chair the Corporate Governance and Nominations Committee is that committee itself.

- 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.**

With regard to the ceiling threshold, News believes that if a single shareholder group owns more than 50% of the voting shares in Newco, it is appropriate for this voting commitment to fall away to enable such shareholder to exercise their full control rights. Maintaining such a restriction in circumstances where a single shareholder was to acquire more than 50% of the voting shares in Newco would negatively impact the attractiveness of Newco to potential future third party investors as a majority shareholder would only be able to change the Articles of Association if they hold more than 75% of the voting shares. It is not clear why this should be a concern from a plurality standpoint.

News notes that this was explained in its Second OFT Response (in response to question 2.4) and neither the OFT nor Ofcom has subsequently raised this as a concern.

News is subject to a commitment not to acquire additional shares in Newco (at 6.1 of the UIL) and to be bound by a voting limitation of 37.19% (i.e. the level of its current voting rights in Sky) (at 3.1 of the UIL). Any concern which might arise in relation to future acquisition of control by a third party would be entirely unrelated to the transaction now in contemplation.

With regard to the floor threshold, if News' shareholding falls below 25% News could not, in any event, ensure that the Articles of Association were not amended by other shareholders. Furthermore, in this situation it is difficult to see why the proposed protections would be required. Without prejudice to this view, News is prepared to lower this bottom threshold to 15% should the Secretary of State deem that to be necessary. Please see section 3.2 of the Second Revised Draft UIL.

- 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?**

All relevant aspects of the corporate governance protections which are to be included in the articles of association of Newco are already set out in the draft UIL. Key aspects of the terms of reference of the corporate governance and nominations committee have also been clarified.

Furthermore the detail of the terms of reference of the corporate governance and nominations committee will be determined by the board of Newco, which will comprise a majority of independent directors.

In light of this, News does not see any reason why the text of Newco's articles of association or the terms of reference of the corporate governance and nominations committee should require prior approval by the Secretary of State.

Finally News notes that a requirement for such a prior approval has not been previously suggested by the OFT or Ofcom (or 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**

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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?

News considers that the need for a special resolution to remove a requirement which is in the articles of association of a company provides more than adequate protection against the removal of these provisions (specifically, the requirement is for 75% of votes cast to be in favour of amendment in order for the amendment to be carried).

News would refer Ofcom to its response to question 2 above in which News indicates its willingness to undertake to continue to vote against any proposed change to Newco's articles of association while it has the right to vote more than 15% of the shares in Newco.

Allen & Overy LLP on behalf of News Corporation

22 February 2011