

Smith, Christine:CO (LN)

From: Steve Unger [REDACTED]
Sent: 23 February 2011 21:20
To: jeff.palker [REDACTED]
Cc: Bavasso, Antonio:CO (LN); Sheldon.Mills [REDACTED]; Steve Unger
Subject: Follow-up from this afternoon's call
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Dear Jeff

Thank you for your time today and hopefully we are progressing towards agreement.

As we discussed earlier today, there are still some differences between us. I understand that the OFT is coming back to you on the issues discussed on our later call. This email follows on from our earlier discussion in respect of the establishment of an editorial committee of the Newco Board.

We proposed that in order to meet our concerns on plurality there should be a transparent mechanism in place to ensure that the editorial integrity and independence of Sky News is at the heart of Newco's Board's interests. We proposed that an editorial committee of the Board should be established with a majority of independent non executive directors, one of whom is the Chairman of the Board Editorial Committee. We expected the Chairman to have senior editorial experience and expertise. We also indicated what we would expect to be included in the terms of reference for the Board Editorial Committee.

Your counter proposal was for a Governance and Nominations Committee to be established that would:

- (a) comprise a majority of members who are Independent Directors (including an Independent Director with editorial and/or journalistic experience);
- (b) be chaired by an Independent Director;
- (c) be entrusted with oversight of Newco's compliance with both the corporate governance provisions and the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code

You previously indicated that the Governance and Nominations Committee would operate under substantially similar terms to those of Sky's current Corporate Governance and Nominations Committee, but we note in your latest UILs you propose that the Newco Board should determine these.

As outlined earlier today, as your proposal is for a general purpose governance committee, and not an editorial committee, we do require further reassurance from you before we can be confident that it would achieve the effect of the editorial committee which we had proposed. By way of example of our concerns, there is a real possibility that the editorial responsibilities of the committee would be diluted by its other functions to such an extent that it would not be effective. As a further example, we understand that a general purpose governance committee would not normally be expected to meet as frequently as the type of editorial committee we had envisaged. For this reason, we outline below what types of measures would give us confidence that your proposed Governance and Nominations Committee would achieve substantially what we envisaged being addressed by an editorial committee.

We would expect the UILs to state that the Secretary of State should approve the terms of reference for the committee. We would also expect Clause 3.1(viii) of the UILs to indicate the key principles of the terms of reference. We would expect the terms of reference to include, for example:

- the editorial function reflected in the name of the committee
- at least one member with senior editorial/journalistic experience
- a majority of independent non-executive directors
- a clear reference to the principles of editorial independence and integrity (which are also contained in the company's constitutional documents)
- a chairman who is the independent director with editorial/journalistic experience
- a clear responsibility to report regularly to the Board on editorial matters

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- an explicit process for the Head of Sky News to report on editorial independence and integrity, as a route to reporting to the Board
- a role in advising the Board on all editorial issues, including advice on decisions relating to the hiring, firing, authority and reporting relationship of the Head of Sky News
- frequency of meetings (e.g. at least once per quarter)
- appropriate resource and powers to investigate all matters relevant to editorial independence and integrity within its remit
- a statement in Newco's annual report on its activities

We note that you have already confirmed some of these would be provided by the Governance and Nominations Committee and that others are included in the current terms of reference for Sky's Governance and Nominations Committee. We would like to see all of the above reflected in the terms of reference for Newco's Governance and Nominations Committee. Could you please consider whether you are prepared to agree and include in the next consolidated amended UILs? Where this is not possible, could you please provide an explanation of the substantive concern that prevents you from doing so?

I'd be very happy to talk to you about this further tomorrow morning.

Best wishes

Steve

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