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24 February 2011

Dear Steve

News Corporation/BSkyB merger UILs

I refer to our conversation yesterday afternoon and your subsequent email to Jeff Palker of 9.20pm in which you set out further elements relating to the terms of reference of Newco's proposed corporate governance and nominations committee that you would expect to see included in the draft undertakings lieu (UIL). I understand that you have discussed these matters with Jeff Palker during the course of today and you have reached agreement with him on all material points.

In the advice given by Ofcom to the Secretary of State on 11 February 2011 (the **Ofcom Advice**) in relation to the UIL submitted by News to the Secretary of State on 24 January 2011 (the **First Draft UIL**), Ofcom stated that it would expect the terms of reference for a committee established to ensure the editorial independence and integrity of Sky News to include the following three items:

- (i) the editorial independence and integrity of Sky News;
- (ii) the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal); and
- (iii) any changes to the authority, reporting relationship and consultation rights of the Sky News Editor.¹

Despite its continued confidence that these provisions were not needed in order to ensure the sufficiency of plurality, News incorporated item (i) into the UIL and addressed item (ii) by providing that the board of Newco (which comprises a majority of independent directors) should approve the hiring and firing of the

¹ At page 6 of the Ofcom Advice.

head of Sky News in a revised set of UIL submitted to the Secretary of State on 16 February 2011 (the **First Revised Draft UIL**). Following further discussions with Ofcom and the OFT, on 24 February News provided a further set of revised draft UIL (the **Second Revised Draft UIL**) to Ofcom which specified that the articles of association of Newco will provide that item (iii) above must be approved by the board of Newco (which comprises a majority of independent directors) and it clarified section 3.1(vi) of the Draft UIL so as to acknowledge that the board must also approve material changes in terms and conditions which could give rise to constructive dismissal.

At paragraph 22 of the Ofcom Advice, Ofcom noted:

"We believe it is critical to the effectiveness of the undertakings in addressing our plurality concerns, that editorial issues are put at the heart of the Board's function, but note this could be achieved in a number of ways. The terms now proposed by News Corporation are a promising basis from which to work. There would be a need to embed provisions relating to the constitutional documents, and for News Corporation to undertake to vote against any proposed changes to them. However, we note that the terms of reference of Sky's current Corporate Governance and Nominations Committee require the committee's recommendations to the Board to be made in consultation with the Chairman [of the Board], which means that, absent an independent Chairman, we would continue to have concerns."

As you know section 3.1(iii) of the First Revised Draft UIL already provides for the chairman of the board to be an independent director (as defined therein) and all those provisions are to be embedded in Newco's Articles of Association.

News considers that all of the substantive issues raised in Ofcom's Advice have already been resolved due to undertakings previously given by News.

News notes that Ofcom believes that editorial matters must be at the heart of the "board's function" but accepts "*this could be achieved in a number of ways*". News does not see how there can be a serious concern that this would not be the case based on the proposed solution. In particular News does not see how it could be doubted that a board committee comprising a majority of independent directors (or the full board of Newco for that matter) would not take its tasks and duties (including those enshrined in the Articles of Association relating to editorial independence) with the utmost consideration. Regardless of this, News is willing to offer additional undertakings on the understanding that it can fully address Ofcom's concerns.

At News' request, your email of last night provided some examples of additional issues that you would expect the terms of reference of the committee to include. News is prepared to set out the principles indicated below in the text of the UIL and so does not believe that an additional requirement for the Secretary of State to approve the terms of reference of the governance and nominations committee is necessary or appropriate. News believes it would be appropriate for the Newco board, which shall consist of a majority of Independent Directors, to draft the actual terms of reference of the committee, based on the principles included in the UIL. On this basis I set out below News' response to each point mentioned in your email last night:

(i) *the editorial function reflected in the name of the committee*

News will change the name of the committee to the "corporate governance and editorial committee" which News believes adequately reflects its broader remit. This is reflected in section 3.1(viii) of the attached revised draft of the UIL (the **Third Revised Draft UIL**).

(ii) *at least one member with senior editorial/journalistic experience*

This has been already provided for at section 3.1(viii)(A) of the First Revised Draft UIL and remains reflected in section 3.1(viii)(A) of the Third Revised Draft UIL.

(iii) a majority of independent non-executive directors

This is has been already provided for at section 3.1(viii)(A) of the First Revised Draft UIL and remains reflected in section 3.1(viii)(A) of the Third Revised Draft UIL.

(iv) a clear reference to the principles of editorial independence and integrity (which are also contained in the company's constitutional documents)

This is has been already provided for at section 3.1(viii)(C) of the First Revised Draft UIL and remains reflected in section 3.1(viii)(C) of the Third Revised Draft UIL.

(v) a chairman who is the independent director with editorial/journalistic experience

The committee will comprise a majority of independent directors (the definition of which, as requested by Ofcom, will now be enshrined in Newco's articles of association in accordance with the relevant provisions of the UK Corporate Governance Code), at least one of whom will have editorial and/or journalistic experience. As set out in detail at question 1.3 of News' response to Ofcom's questions of 21 February 2011, News 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 and we do not see how this could have any impact on the maintenance of plurality or fulfilment of the tasks entrusted to the committee. As the committee has other functions it would not be appropriate to limit the candidates for Chairmanship of the subcommittee to those with editorial experience alone. I understand that you indicated orally to Jeff Palker that this would be acceptable to Ofcom.

(vi) a clear responsibility to report regularly to the Board on editorial matters

News has provided in the Third Revised Draft UIL at section 3.1(viii)(D)III that the governance and nominations committee will report regularly to the Newco board.

(vii) an explicit process for the Head of Sky News to report on editorial independence and integrity, as a route to reporting to the Board

The head of Sky News will be free to make representations to the committee on editorial independence and integrity (as, indeed, he or she will be to make such representations to the board).

News has also provided in the Third Revised Draft UIL at section 3.1(viii)(D)V that the corporate governance and editorial committee will consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) of the UIL and report any such representations to the board of Newco; and

(viii) 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

The board of Newco which comprises a majority of independent directors including at least one with editorial and/or journalistic experience would be free to seek any advice it sees fit in discharging its fiduciary duties including the appointment of the head of Sky News.

News has however provided in the Third Revised Draft UIL at section 3.1(viii)(D)VI that the governance and nominations committee will advise the Newco board on issues within its remit including on any approval specified at section 3.1(vi) of the Third Revised Draft UIL.

(ix) *frequency of meetings (e.g. at least once per quarter)*

News has provided in the Third Revised Draft UIL at section 3.1(viii)(D)II that the governance and nominations committee will meet at least four times a year.

(x) *appropriate resource and powers to investigate all matters relevant to editorial independence and integrity within its remit*

News has included a commitment in the Third Revised Draft UIL at section 3.1(viii)(D)II that this is specifically provided for.

(xi) *a statement in Newco's annual report on its activities*

News has provided in the Third Revised Draft UIL at section 3.1(viii)(D)IV that the governance and nominations committee will cause for a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(viii)(C) of the UIL.

In light of these further undertakings offered by News, I understand that you confirmed to Jeff Palker that you believe that Ofcom will be able to advise the Secretary of State to accept the UIL offered by News.

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