

Subject: FW: RESTRICTED - RE: Revised UILs - News/BSkyB - Confidential (0012561-0000367)
Categories: Copied to Virtual File
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MatterInformation: MATTER_ID:0000367|CLIENT_ID:0012561

From: Nicholas Scola [REDACTED]
Sent: 14 June 2011 12:43
To: Bavasso, Antonio:CO (LN); Sheldon Mills
Cc: dive.carter [REDACTED]; Stephen.Unger [REDACTED]; Marco.Marini [REDACTED];
Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED]; jeff.palker [REDACTED];
andrea.appella [REDACTED]; Anil.Jhingan [REDACTED]; Long, Dominic:CO (LN); Darbon,
Cerry:CO (LN); Victoria.Kaye [REDACTED]
Subject: RE: RESTRICTED - RE: Revised UILs - News/BSkyB - Confidential (0012561-0000367)

Dear Antonio,

Many thanks for your email.

We are grateful for your confirmation in relation to points 1, 2 and 4.

On point 3, we are grateful for your acceptance of the change to paragraph 6.7. On paragraph 6.5, we have no objections to reverting to the suggested language of 13 May for paragraph 6.5 (assuming it includes a backstop date).

Aside from the above, I can confirm that - at present - OFT / Ofcom have no further outstanding points. However, you will appreciate that this is without prejudice to the possibility that we may need to revert to News on specific points for the purpose of finalising our advice to the Secretary of State.

We look forward to receiving a revised draft of the UIL in line with the above.

Kind regards

Nick

Nicholas Scola | Deputy Director, Mergers | Office of Fair Trading
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T: [REDACTED]

From: Antonio.Bavasso [REDACTED]
Sent: 14 June 2011 11:24
To: Nicholas Scola; Sheldon Mills
Cc: dive.carter [REDACTED]; Stephen.Unger [REDACTED]; Marco.Marini [REDACTED];
Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED]; jeff.palker [REDACTED];
andrea.appella [REDACTED]; Anil.Jhingan [REDACTED]; Dominic.Long [REDACTED];
Cerry.Darbon [REDACTED]; Victoria.Kaye [REDACTED]
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Further to my email below. I can now confirm that Sky holds the records that you refer to in point 2 below which are relevant to compliance with section 4.9 of the UIL.

I look forward to hearing from you.

Best wishes

A.

From: Bavasso, Antonio:CO (LN)
Sent: 14 June 2011 11:17
To: 'Nicholas.Scola'; 'Sheldon.Mills'
Cc: 'clive.carter'; 'Stephen.Unger'; 'Marco.Marini';
'Nuala.Cosgrove'; 'Jess.Hinings'; 'jeff.palker';
'andrea.appella'; 'Anil.Jhingan'; Long, Dominic:CO (LN); Darbon,
Cerry:CO (LN); 'Victoria.Kaye'
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Dear Nick - News is prepared to modify the UILs as you requested in points 1 and 4 below.

On point 3 and the removal of "best endeavours" in 6.5 and 6.7 I said that News had accepted your position as you had not previously requested the removal of "best endeavours" in paragraph 6.7 in your mark up of 13 May (attached for your convenience), and you did not request the removal of that language in 6.5, although you had proposed a longer term of 15 days on an "in any event" basis. We had discussed that, given the best endeavours obligation, it was odd to indicate a different (longer) term on a "in any event" basis. However if you now request that we remove the OFT standard "best endeavours" language also in conjunction with a short term of 7 days we would be OK to revert to the language you suggested on 13 May. Can you please let me know what your position is as News does not want this issue to cause any delay in your finalisation of the OFT report to the Secretary of State. The modification to section 6.7 is, in any event, agreed.

We are checking the position with Sky on point 2 and we will revert to you very shortly.

Can you please also confirm as soon as you that there are no other points open on the UIL so that we can send you a final set of UIL tracked against last version sent and the consultation version.

Best wishes

A.

From: Bavasso, Antonio:CO (LN)
Sent: 13 June 2011 19:56
To: 'Nicholas.Scola'; 'Sheldon.Mills'
Cc: 'clive.carter'; 'Stephen.Unger';
'Marco.Marini'; 'Nuala.Cosgrove';
'Jess.Hinings'; 'jeff.palker';
'andrea.appella'; 'Anil.Jhingan'; Long, Dominic:CO (LN);
Darbon, Cerry:CO (LN); 'Victoria.Kaye'
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Dear Nick - thank you. We will consider each of these points and we will revert as soon as possible tomorrow.

In the meantime can you please confirm that there are no other outstanding points from OFT/Ofcom other the ones listed below.

Regards

From: Nicholas Scola [REDACTED]
Sent: Monday, June 13, 2011 07:45 PM
To: Bavasso, Antonio:CO (LN); Sheldon Mills [REDACTED]>
Cc: clive.carter [REDACTED];
 Stephen.Unger [REDACTED]>;
 Marco.Marini [REDACTED]>;
 Nuala.Cosgrove [REDACTED]>;
 Jess.Hinings [REDACTED]>; Jeff.Palker [REDACTED];
 [REDACTED]>; Andrea.Appella [REDACTED];
 [REDACTED]>; Anil.Jhingan [REDACTED];
 [REDACTED]>; Long, Dominic:CO (LN); Darbon, Cerry:CO (LN);
 Victoria.Kaye [REDACTED]
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Dear Antonio,

Many thanks for your email - and for sending the comparites through.

We had four points in relation to the UIL, in relation to which we would be grateful for your consideration.

1. Paragraph 4.6 - the duration of the Brand Licensing Agreement is detailed as being 'for an initial 7 year term, with an automatic renewal for a further 7 years' - we would request that this be amended to 'for a fourteen year term' in accordance with the revised Brand Licensing Agreement.

2. Paragraph 4.9 - this paragraph refers to cross promotion of Sky News by Sky 'on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the Effective Date'. Please confirm that Sky keeps adequate records to demonstrate compliance with paragraph 4.9 of the UILs.

3. Paragraphs 6.5 and 6.7 - when we spoke earlier, you described News as having accepted our position in relation to the appointment of the Monitoring Trustee (MT). We would request that the wording in relation to 'best endeavours' is removed from paragraphs 6.5 and 6.7 in order to provide greater certainty as to the appointment of a MT.

4. Paragraph 6.8 - the drafting of the point for termination of the role of the MT was intended to ensure that the MT remained in place during spin-off and for the entry into force of the operational agreements. However, on further review of our original drafting, we note that the operational agreements could potentially be entered into prior to spin-off (in accordance with paragraph 5.1). In order to ensure that, in such a scenario, the MT should remain in place until spin-off, we would request that paragraph 6.8 be amended to read:

6.8 The Monitoring Trustee shall remain in place until the spin-off of the Sky News business in accordance with section 2 or until all of the operational

agreements detailed in section 5.1 above become effective, whichever is the later.

I hope that the above is clear - but please do not hesitate to give me a call if you would like to discuss.

Kind regards

Nick

Nicholas Scola | Deputy Director, Mergers | Office of Fair Trading
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T: 
