

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Mr Jay, tomorrow morning we'll start 4 at 9.30. There's clearly a fair amount of ground to 5 cover and I don't want to run short of time. 6 MR JAY: Indeed. Page 47 now, Mr Michel, 01688. There were 7 a number of calls before this email, at least 15 8 minutes' worth. Mr Smith disputes the request for help 9 to prepare him, so where did you get that from, may 10 I ask you? 11 A. Probably from the call itself. I think we spoke for 15 12 minutes beforehand. 13 Q. How did you interpret that, though, the request for your 14 help to prepare him? It was almost as if the two of you 15 would be working together with the same objective; is 16 that right? 17 A. I think it was a normal discussion around whether or not 18 I could provide some feedback or elements which would 19 help Adam prepare the Secretary of State. I think it 20 would just -- yes, the documentation on the technical 21 aspects or ... 22 Q. Okay. 01689, page 48. This is a very formal-looking 23 email. We've worked out what it is. It was an email 24 that the Secretary of State was going to send to various 25 constituency MPs setting out his formal position, and</p> <p style="text-align: center;">Page 1</p>	<p>1 meaning of the sentence would be. 2 Q. Regardless of the audience, and it is aimed at 3 constituency MPs, we know that from other evidence it's 4 how that would chime with you, because you were already 5 in receipt of one piece of running commentary at 6 page 01687, and as we're about to see, you get a lot 7 more running commentary. Just whether that caused your 8 antennae as it were to begin to flicker a bit? 9 A. I wouldn't qualify the discussion I was having with Adam 10 as running commentary. They were back and forth 11 discussions on the process as it was unfolding. 12 LORD JUSTICE LEVESON: Sorry, what's that, if it's not 13 a running commentary? 14 A. Well, I just think, sir, that running commentary is 15 a very broad definition. I think -- well you've seen 16 probably from those memos there were a lot of things on 17 timing, process, decisions we needed to make internally, 18 redactions of documents, stages of discussions. I think 19 it was much more precise than just a sort of broad 20 chit-chat commentary. 21 MR JAY: Let's look at another memorandum as you describe 22 it, email, 01692, page 51. It was sent close on 23 9 o'clock on the Sunday morning, 23 January. 24 We know from the call data that at 17.59 the 25 previous afternoon you had a 17-minute conversation with</p> <p style="text-align: center;">Page 3</p>
<p>1 you, as it were, were being given advance sight of it. 2 Do you see that? 3 A. Yeah, I'm not sure if it's advance or it was when it was 4 being sent. 5 Q. That may be right. I'll ask you a couple of points 6 arising out of this very properly worded document. Do 7 you see in the second paragraph: 8 "In taking this decision it is open to the Secretary 9 of State to take representations. However, it would 10 detract from the decision-making process to provide 11 a running commentary on what, if any, discussions he is 12 having." 13 Do you see that? 14 A. Yes. 15 Q. Did that begin to raise any alarm bells with you? 16 A. I think it's probably referring to not running a running 17 commentary to the media, which is what Adam would always 18 say, that as a position they were very keen not to be in 19 a position where they had to answer every request all 20 the time. 21 Q. It would certainly include a running commentary to the 22 media, but it might include a running commentary to 23 News Corp, would you accept that? 24 A. I don't know. I don't know if -- this is aimed at 25 constituency MP. I don't know if that's what the</p> <p style="text-align: center;">Page 2</p>	<p>1 Mr Smith. Do you follow me? 2 A. Yes, and I think I had also one after that email as 3 well. 4 Q. That's probably right, Mr Michel, but in terms of 5 what -- 6 A. Sorry, yes. 7 Q. -- went into the email, it was the 17-minute call. 8 There's a lot of material here which was not in the 9 public domain. Do you see, for example, the timeline 10 for the UILs, because they'd just been announced, hadn't 11 they, I think three days before? Do you see the 12 sentence "He predicts it should all be done by 13 mid-February"? 14 A. Yes. 15 Q. That's something Mr Smith told you, wasn't it? 16 A. Yes. 17 Q. And it wasn't something you knew otherwise, was it? 18 A. No. 19 Q. What about the next sentence, which I should make it 20 clear is hotly disputed by Mr Smith: 21 "His view is that once he announces publicly he has 22 a strong UIL, it's almost game over for the opposition." 23 Can I be clear about this, Mr Michel? Whose 24 phraseology is "it's almost game over for the 25 opposition"?</p> <p style="text-align: center;">Page 4</p>

1 (Pages 1 to 4)

<p>1 A. I think at the meeting on 20 January, the minuted formal 2 meeting, the Secretary of State had already used the 3 word "game changer" for the UIL and the fact that 4 News Corp was providing that remedy was a game changer, 5 so it doesn't surprise me to see that phraseology here. 6 Q. Bit of a difference between game changer and game over, 7 isn't there? 8 A. Probably. I think -- sorry. 9 Q. The question was whose phrase was that? There are only 10 two possibilities here. It's either Mr Smith's phrase, 11 which you're putting down verbatim, or it's your gloss 12 on whatever Mr Smith said, or I suppose it's an 13 invention or exaggeration. We just need to know which 14 it is. 15 A. I wouldn't say it's an exaggeration. I'm sure it comes 16 from a discussion with Adam. I'm not surprised to read 17 it, given that's what the remedy was providing. 18 Q. But the remedy itself was, as it were, hotly disputed 19 and it was going to be considered by Ofcom and OFT and 20 people were saying that notwithstanding the UILs, the 21 matter should still be referred to the Competition 22 Commission, weren't they? 23 A. Yeah, that was the advice afterwards, subsequently. 24 Q. That's right. So there were clearly two rooms or two 25 opinions here, and someone was expressing the opinion</p> <p style="text-align: center;">Page 5</p>	<p>1 through his adviser. 2 LORD JUSTICE LEVESON: So is this the case, Mr Michel: you 3 believe that actually this is a communication with the 4 Secretary of State through the mouth of Mr Smith? 5 A. I believe that whatever Mr Smith tells me represents the 6 view of the Secretary of State, yes. 7 MR JAY: Although, strictly speaking, the pronoun "he" is 8 Mr Smith. Whether Mr Smith is speaking for the 9 Secretary of State is your inference or your deduction, 10 is that -- 11 A. No, it's the way I process -- it's how I should -- I was 12 to work. 13 LORD JUSTICE LEVESON: I'm not so sure, actually, Mr Jay. 14 Because "he wants us to take heat with him" is hardly 15 a reference to Mr Smith. 16 A. Yes. 17 MR JAY: Although it's -- yes. 18 LORD JUSTICE LEVESON: Well, that's why I raised the 19 question. 20 MR JAY: Maybe I should ask the question in this way: 21 obviously it's Mr Smith talking to you on the phone, 22 it's not Mr Hunt talking to you. But when Mr Smith is 23 talking to you, what is he doing? Is he communicating 24 his own view or is he referring to someone else's view? 25 A. He's communicating the view of him and the Secretary of Page 7</p>
<p>1 that with the strong UILs, it's almost game over for the 2 opposition. 3 A. Yes. 4 Q. And you think that's Mr Smith? 5 A. Yes. If I put it in the memo, I think it reflected our 6 conversation. 7 Q. Then the next sentence: 8 "He understands fully our concerns/fears regarding 9 the publication of the report and the consultation of 10 Ofcom in the process; but he wants us to take the heat, 11 with him, in the next 2 weeks." 12 Again, where did you get that from? 13 A. From the conversation. It's probably me reflecting the 14 fact that there was a need for everyone, ie DCMS and 15 News Corp, whilst this remedy is being presented, to 16 make sure we put as strong arguments as we can, because 17 the Secretary of State was deciding not to refer and to 18 look at the UIL and accept it. 19 LORD JUSTICE LEVESON: Are all these "he"s the same person? 20 "He" announces he is minded to refer, "he" predicts it 21 should be done by mid-February, "his" view, "he" 22 understands. Is all that the same person? 23 A. Yes, I assume that was -- the way I was writing those is 24 that I assume it was the position of the Secretary of 25 State, so I used the "he" as a -- as one for Jeremy Hunt</p> <p style="text-align: center;">Page 6</p>	<p>1 State. You know, that's why -- as we discussed earlier. 2 Q. Mm. Okay. 3 A. I was representing News Corp, he was representing the 4 Secretary of State in those discussions. 5 Q. It continues: 6 "He very specifically said that he was keen to get 7 to the same outcome and wanted JRM to understand he 8 needs to build some political cover on the process." 9 So again you are setting out Mr Hunt's view as 10 articulated by Mr Smith, are you? 11 A. Mm-hm. Yes. 12 Q. Did you find any of this surprising, that this is what 13 you were being told? 14 A. I think we were at a stage in the process where the 15 decision not to refer was going to create, as the 16 narrative goes, some heat politically for the Secretary 17 of State, and although we believed the remedy was 18 structured -- was very strong and said all the plurality 19 concerns, the Secretary of State, in presenting that 20 remedy, was going to take a lot of criticism. So, no, 21 I was not surprised to -- 22 Q. But it isn't just a criticism which would be to, as it 23 were, deal with the political and legal ramifications of 24 this. It is more: 25 "He very specifically said that he was keen to get</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 to the same outcome ..."</p> <p>2 And a bit later on:</p> <p>3 "He said we would get there in the end and he shared</p> <p>4 our objectives."</p> <p>5 How did you interpret that, Mr Michel?</p> <p>6 A. I think I interpreted it as he wanted the UIL to be well</p> <p>7 presented and he wanted the UIL to be properly debated,</p> <p>8 because he believed, as I mention, that it was a game</p> <p>9 changer in the entire bid process.</p> <p>10 Q. Mr Michel, with respect, I'm not satisfied with that</p> <p>11 answer. If you take the three things together, "it's</p> <p>12 almost game over for the opposition", "he very</p> <p>13 specifically said that he was keen to get to the same</p> <p>14 outcome", "he said we would get there at the end and he</p> <p>15 shared our objectives", that means only one thing, that</p> <p>16 he shared the ultimate objective of News Corp, which was</p> <p>17 to secure the remaining shares in BSkyB. That's the</p> <p>18 only reasonable interpretation which can be borne on</p> <p>19 this and it's the one you took away at the time, isn't</p> <p>20 it?</p> <p>21 A. Although if I can put a caveat on the narrative that was</p> <p>22 being given on an ongoing basis at every stage, the</p> <p>23 Secretary of State followed the advice of regulators</p> <p>24 and --</p> <p>25 Q. It's not my question --</p> <p style="text-align: center;">Page 9</p>	<p>1 Q. -- before then.</p> <p>2 LORD JUSTICE LEVESON: I'm sorry, did you say what time the</p> <p>3 telephone call was before the 9 o'clock am Sunday</p> <p>4 morning?</p> <p>5 Q. Yes, it was the previous afternoon at 17.59.</p> <p>6 LORD JUSTICE LEVESON: Thank you.</p> <p>7 MR JAY: 17 minutes and zero seconds.</p> <p>8 The one at 8.39 in the evening, the call was 18</p> <p>9 minutes, 50 seconds at 18.21 hours.</p> <p>10 Mr Smith accepts the general content of this, but he</p> <p>11 disputes the tone, Mr Michel, so we're clear about this</p> <p>12 email. You agree that he was giving you the impression</p> <p>13 that DCMS were minded to accept the UIL but would say</p> <p>14 otherwise publicly?</p> <p>15 A. Sorry, did you say -- about the tone, what do you mean?</p> <p>16 The tone, sort of the language used or the --</p> <p>17 Q. Yes. Mr Smith disputes the tone, because the tone is --</p> <p>18 well, people can draw their own conclusions from the</p> <p>19 tone.</p> <p>20 A. Okay.</p> <p>21 Q. But he will say that he didn't speak to you in quite</p> <p>22 this -- I'm not going to put an adjective around --</p> <p>23 I think you get the point I'm making. We'll hear from</p> <p>24 him in due course but I'm indicating where the dispute</p> <p>25 is.</p> <p style="text-align: center;">Page 11</p>
<p>1 A. No but I just want to --</p> <p>2 Q. Whether or not he did, it is what you took away from</p> <p>3 this from what you were being told by Mr Smith. Now</p> <p>4 you're agreeing with me that what you were being given</p> <p>5 was immense reassurance that we would succumb all the</p> <p>6 political and legal obstacles, we would avoid judicial</p> <p>7 review and in the end we would get what we both want,</p> <p>8 which is News Corp acquiring the remaining shares in</p> <p>9 this company. That's what Mr Smith rightly or wrongly</p> <p>10 was telling you, wasn't it?</p> <p>11 A. No, with due respect, I wouldn't take that leap in terms</p> <p>12 of interpreting it. I would take definitely comfort</p> <p>13 that we had a strong chance to see it through in terms</p> <p>14 of our addressing plurality concerns, but I wouldn't</p> <p>15 have that broad approach.</p> <p>16 Q. What broad approach?</p> <p>17 A. Sorry, of your -- I wouldn't take that leap in terms of</p> <p>18 how you --</p> <p>19 Q. He wasn't giving you a guarantee, but he was giving you</p> <p>20 a very strong indication where departmental thinking was</p> <p>21 lying at that point, wasn't he?</p> <p>22 A. Yes, it's encouraging.</p> <p>23 Q. At the next page, 01693, page 52. This is Sunday</p> <p>24 evening now. There had been another telephone call --</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 10</p>	<p>1 The question was: do you think he was giving you the</p> <p>2 impression that DCMS were minded to accept the UIL but</p> <p>3 would say otherwise publicly?</p> <p>4 A. Yes.</p> <p>5 Q. 01695. Page 54. That first email is timed at 15.21,</p> <p>6 you to Mr Murdoch. Do you see that? This is the one in</p> <p>7 bold:</p> <p>8 "Managed to get some infos on the plans for tomorrow</p> <p>9 (although absolutely illegal)."</p> <p>10 And then there's a couple of squiggles there. Why</p> <p>11 did you say "although absolutely illegal"?</p> <p>12 A. It's a very bad joke, which shouldn't have been made.</p> <p>13 I think it was out of my surprise to get a briefing on</p> <p>14 the content of the statement at such an early stage. In</p> <p>15 hindsight, which is always a good thing, I wouldn't have</p> <p>16 put such words. I have since learned that it's not</p> <p>17 unusual to get pre-notification for a statement in</p> <p>18 Parliament to be given to some of the parties to the</p> <p>19 transaction, so -- but I was -- it's just an expression</p> <p>20 of surprise from me.</p> <p>21 Q. Your thinking at the time is that you were being given</p> <p>22 advance notice of something you ought not to be,</p> <p>23 otherwise you wouldn't have put that in brackets, would</p> <p>24 you?</p> <p>25 A. Yeah, I think less on the content, more the timing.</p> <p style="text-align: center;">Page 12</p>

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<p>1 I think it was very early before the statement was made.</p> <p>2 I would have expected it to be probably later in the</p> <p>3 evening. But that's why probably I wrote that.</p> <p>4 Q. There's evidence of an 18-second call -- yes, it's 18</p> <p>5 seconds before this email, and then there are various</p> <p>6 text messages which you actually collect up in the</p> <p>7 exhibit to your first statement at 03256. You probably</p> <p>8 remember those.</p> <p>9 A. I have a call -- I don't know if it's -- it might have</p> <p>10 been a call just 10 minutes before that email was</p> <p>11 written. Oh no, it's 15, sorry, that's before the other</p> <p>12 one. On that one I don't know, sorry. I refer to the</p> <p>13 one above, sorry.</p> <p>14 Q. The text message relates to the timing. There are some</p> <p>15 disputes about this which I'll put to you quickly.</p> <p>16 A. Sure.</p> <p>17 Q. Do you see, level with the lower hole punch:</p> <p>18 "Lots of legal issues around the statement so he has</p> <p>19 tried to get a version which helps us by qualifying the</p> <p>20 threats identified by Ofcom."</p> <p>21 Well, the "helps us" is denied by Mr Smith, probably</p> <p>22 for obvious reasons, but what is your position on that,</p> <p>23 Mr Michel? Are you sure that's what he said?</p> <p>24 A. Yes, I think the "helps us" means help presenting the</p> <p>25 UIL in an adequate way. I don't read any more than</p> <p style="text-align: center;">Page 13</p>	<p>1 LORD JUSTICE LEVESON: Mr Michel, you've mentioned the team</p> <p>2 several times. I wonder if you could help me --</p> <p>3 A. Sorry.</p> <p>4 LORD JUSTICE LEVESON: -- what they all do. You mentioned</p> <p>5 Matthew Anderson. What does he do?</p> <p>6 A. He was the person I was reporting to until my new role.</p> <p>7 He was director of corporate affairs and strategy.</p> <p>8 LORD JUSTICE LEVESON: All right, so he's director of</p> <p>9 corporate affairs. And who is Andrea Appella?</p> <p>10 A. He's our regulatory lawyer. He's deputy general counsel</p> <p>11 in charge of regulatory competition issues.</p> <p>12 LORD JUSTICE LEVESON: And Palker, Jeff?</p> <p>13 A. He's our general counsel for Europe and Asia.</p> <p>14 LORD JUSTICE LEVESON: And Alice Macandrew?</p> <p>15 A. She was the director of communication.</p> <p>16 LORD JUSTICE LEVESON: Did any of these emails or any of the</p> <p>17 contents get discussed with those lawyers who were</p> <p>18 advising News Corp on the bid? Who are they?</p> <p>19 A. Outside counsel?</p> <p>20 LORD JUSTICE LEVESON: Outside.</p> <p>21 A. Yes, they were Allen & Overy.</p> <p>22 LORD JUSTICE LEVESON: And were they discussed with Allen</p> <p>23 & Overy, these emails?</p> <p>24 A. Yes, I'm sure the content of some of those emails would</p> <p>25 have been, yes.</p> <p style="text-align: center;">Page 15</p>
<p>1 this. So I would -- yes.</p> <p>2 Q. And the reference to "very fast" on the next page, level</p> <p>3 with the upper hole punch.</p> <p>4 A. Yes.</p> <p>5 Q. That's denied and that isn't borne out by any of the</p> <p>6 text messages, to be fair, so where do you feel that</p> <p>7 might have come from, if anywhere?</p> <p>8 A. I think this memo must have been borne out of a call.</p> <p>9 I don't think -- I mean, I don't believe that kind of</p> <p>10 detailed conversation would have been given by text.</p> <p>11 The idea that it's wanted to be done very fast I think</p> <p>12 is something that I would have been told on an ongoing</p> <p>13 basis, that of course we want a timing to be done</p> <p>14 quickly. That's probably a way to appease my -- our</p> <p>15 sort of fears that this could be a process that could</p> <p>16 drag on.</p> <p>17 Q. On any view, you're being given information here which</p> <p>18 is not in the public domain and which, I suppose, is</p> <p>19 inside information for News Corp. Would you agree with</p> <p>20 that?</p> <p>21 A. Well, I think it was given to the team that was</p> <p>22 interacting with DCMS on the transaction, it's probably</p> <p>23 an assumption which was right, that this wouldn't go</p> <p>24 anywhere else and stay in the bound of confidentiality</p> <p>25 as we always did.</p> <p style="text-align: center;">Page 14</p>	<p>1 MR JAY: I think right in saying we don't see any evidence</p> <p>2 of them being forwarded to Allen & Overy, but your</p> <p>3 evidence is that the gist or content was discussed with</p> <p>4 them --</p> <p>5 A. Do you mean that specific one?</p> <p>6 Q. Yes, or any of them, actually.</p> <p>7 A. No, I wouldn't be liaising with Allen & Overy. That</p> <p>8 wouldn't be my role.</p> <p>9 Q. No. I move on to 01704. Your page 63. This relates to</p> <p>10 Mr Hunt's statement to Parliament, doesn't it?</p> <p>11 A. Yes.</p> <p>12 Q. And the remedy is the reference to the UILs, obviously.</p> <p>13 And what the email says is:</p> <p>14 "He can't say they are too brilliant [that's the</p> <p>15 UILs] otherwise people will call for them to be</p> <p>16 published."</p> <p>17 A. Yes, I think it's an extract of text with Adam.</p> <p>18 Q. Yes, the relevant text is at page 02345 in your exhibit.</p> <p>19 Mr Smith's text to you is:</p> <p>20 "There's plenty potential to mitigate problems. We</p> <p>21 can't say they're too brilliant otherwise people will</p> <p>22 call for them to be published. Will check on meeting."</p> <p>23 So you've set it out more or less verbatim there,</p> <p>24 haven't you?</p> <p>25 A. Yeah, except for "will check on meeting."</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 Q. I suppose that was another indication that the wind was 2 blowing hard in your direction, wasn't it?</p> <p>3 A. I think it was an indication that the problems attached 4 to plurality were being mitigated by our UIL, which was 5 a very strong structural and financial concession from 6 the company.</p> <p>7 Q. I think that's just a different way of putting the same 8 thing, isn't it?</p> <p>9 A. Yeah, yeah. I mean, this was a discussion around the 10 UIL. As you said, it was around the statement on the 11 UIL, so I would agree that it's a supportive comment 12 on -- on that.</p> <p>13 Q. If you look at the next page, 01705, your page 64, 14 another chat. The chat, I think, is probably 15 a reference to a text message exchange, isn't it, rather 16 than a conversation?</p> <p>17 A. Probably.</p> <p>18 Q. Probably nothing to --</p> <p>19 A. Yes, I think this was from a text from Adam.</p> <p>20 Q. Yes, our page 03245. The email says: 21 "He said he had no legal wriggle room in a statement 22 to Parliament." 23 The text says: 24 "Other than what Jeremy and I have told you, we have 25 no legal wriggle room in a statement to Parliament."</p> <p style="text-align: center;">Page 17</p>	<p>1 I haven't spotted, you've got your evidence for that 2 part of the email. It's in that schedule, is it?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So you are basing that on something Mr Smith 5 said?</p> <p>6 A. Yes, I think 85 per cent of the memo is verbatim. My 7 only, let's say, colourful addition is "to prevent any 8 accusation of deal-making at this stage".</p> <p>9 Q. Okay, thank you.</p> <p>10 The next one is 01707. Your page 66. There are 11 some relevant texts which precede it.</p> <p>12 "We've had an update on today's events ... weaken 13 most of the opponent's arguments", I'm paraphrasing.</p> <p>14 "JL believes we are in a good place tonight. Let's 15 see what the morning's coverage brings."</p> <p>16 And the texts say -- your text: 17 "Today went well. Look at the Coalition's campaign 18 statement, so weak."</p> <p>19 Do you see that one?</p> <p>20 Four hours later: 21 "I think we're in a good place tonight, no?" 22 Mr Smith says: 23 "I agree, coverage looks okay. Let's look again in 24 the morning though!"</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 19</p>
<p>1 So you've set that bit out entirely faithfully. 2 It's the next bit, though, Mr Michel, which I'm sure 3 Mr Smith will say is extraneous gloss: 4 "And he only needs some space to prevent any 5 accusation of deal-making at this stage." 6 That isn't reflected by an antecedent text and 7 you've elaborated there.</p> <p>8 A. That's probably me adding something else as well, yes.</p> <p>9 Q. So it was the inference you drew rather than anything --</p> <p>10 A. Yes. I think so. If it's not backed up by text, sorry, 11 I can't remember every text, and I have the schedule 12 here which doesn't show any of the -- it's probably 13 something I drew myself.</p> <p>14 Q. If you were attributing rather this phrase, this clause, 15 to Mr Smith, it would be quite damaging because it 16 wouldn't be quite an allegation of bad faith, but it 17 would be suggesting that they were acting in a less than 18 wholly open and transparent manner, but I think your 19 evidence is that you're not attributing that to him?</p> <p>20 A. No, there is a text at 9.40 from Adam to me saying: 21 "It's all exactly as we said, we just need space."</p> <p>22 Q. Can you just tell me where that one is, Mr Michel?</p> <p>23 A. On 25 January at 9.40. So an hour and a half after the 24 first text.</p> <p>25 Q. It's not in your list. If there's a further text which</p> <p style="text-align: center;">Page 18</p>	<p>1 Q. So he agrees that "we're in a good place", but I suppose 2 the argument might surround who the "we" in that 3 sentence is a reference to and what "good place" might 4 mean, but how did you interpret that?</p> <p>5 A. That the process of presenting the UIL had gone well and 6 that we were in a good place compared to where we were 7 a few days before, when everyone was stressing about the 8 presentation of it. I don't know if it related to the 9 media specifically, but ...</p> <p>10 Q. The argument was moving your way, wasn't it?</p> <p>11 A. Well, the presentation of the UIL had gone well, and 12 most commentators were agreeing that plurality concerns 13 had been met.</p> <p>14 Q. There isn't going to be time to go through each and 15 every one of these, otherwise we really will be here for 16 a very long time. I need to identify those which are 17 more important than others.</p> <p>18 If you look at 01708, page 67, that one is borne out 19 by some antecedent texts. The next one we're going to 20 look at is 01711, page 70. That one again is borne out 21 by an antecedent text.</p> <p>22 Page 71, I think this one is more controversial, 23 01712. It's on Friday, 4 February in the afternoon. 24 The call data shows a 23-minute, 15-second call at 09.24 25 in the morning, and there was a text at our page 03247,</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 two texts. One from you to Mr Smith and one from he to 2 you, not long before the email was sent. Your text to 3 him: 4 "Are you able to send me the Enders and Slaughter 5 documents. Would help me prepare for the public debate. 6 Enjoy golf." 7 Were those confidential documents at that stage? 8 A. "Enders and Slaughter documents"? 9 Q. Yes. 10 A. I think they were the submission made to the department 11 from the other side, as it were. I think they had been 12 leaked quite extensively. 13 Q. Apart from the fact that they had been leaked quite 14 extensively, they were confidential documents, weren't 15 they? 16 A. I can't assess whether or not they were confidential. 17 I actually didn't see them at this stage. 18 Q. What Mr Smith replies to you at 17.30 hours: 19 "I haven't actually got them at the moment. 20 Officials just told me about them. Don't mention them 21 to anyone like oft, et cetera. If we need them I'll 22 show you." 23 So he's indicating that he shouldn't really be 24 providing them to you, isn't he? 25 A. I think he had a discussion with officials about it and</p> <p style="text-align: center;">Page 21</p>	<p>1 A. No. It doesn't seem that way. 2 Q. Apart from the texts we've seen and the earlier 3 telephone conversation, do you know where the other 4 information we see in this email is derived from? In 5 particular, the reference to the "very quick public 6 consultation process" and the heat being "absolutely 7 massive from the Coalition", that's on the next page. 8 A. I might have had a discussion that day. 9 LORD JUSTICE LEVESON: As you pass from that email, there's 10 a new name that we haven't identified, Anil Jhingan. 11 A. He's another deputy general counsel. 12 LORD JUSTICE LEVESON: Another lawyer? 13 A. Yes. 14 MR JAY: If you take this email as a whole, including the 15 reference to he completely agreeing with our fears, 16 given the toxic relationship and mistrust of Ofcom, the 17 clear impression we get is that Mr Smith, either 18 speaking for himself or for someone else, was on your 19 side. Would you agree with that? 20 A. On the issues letter? 21 Q. Yes. 22 A. I think he was probably agreeing with the fears I was 23 expressing, which is something he would do very often, 24 and he probably would refer to the toxic relationship 25 and mistrust of Ofcom, between Ofcom and News Corp,</p> <p style="text-align: center;">Page 23</p>
<p>1 that -- yes, he's not willing to give them to me, 2 probably. I will agree. 3 Q. But it's the line "Don't mention them to anyone like 4 oft, et cetera." It's what obvious inference you might 5 deduce from that, Mr Michel. 6 A. At the time? 7 Q. Yes. 8 A. That anything the DCMS would receive as documents 9 shouldn't be shared with the OFT. 10 LORD JUSTICE LEVESON: Because you shouldn't have got them? 11 A. Probably why I didn't get them. 12 LORD JUSTICE LEVESON: Maybe. 13 MR JAY: Well, the email says: 14 "I'm trying to get the documents, but it might be 15 difficult." 16 A. Yes. 17 Q. I think at the end of the day you didn't get the 18 documents; is that right? 19 A. No. I know other people had managed to, but although we 20 were party to the transaction, we didn't have access to 21 them. 22 Q. Although Mr Smith was apparently -- indeed he was, it 23 wasn't just apparently, the text speaks for itself -- 24 indicating that if you need them he will provide them to 25 you, so it's clear you didn't ask him for them, did you?</p> <p style="text-align: center;">Page 22</p>	<p>1 which was -- the ongoing feature I had to deal with. 2 I think that's why -- so he would probably agree with 3 that sort of climate. If that appears. 4 Q. By this stage in your relationship with Mr Smith, you 5 were getting on well with him, weren't you? 6 A. At every stage until even after the bid. 7 Q. And maybe you felt that you'd drawn him into your 8 confidence; is that right? 9 A. No, I think he was my interlocutor in that process and 10 we were both representing him the department and me News 11 Corporation. I don't think I had drawn him in -- in -- 12 no. If anything, actually, some of his response to my 13 requests are pretty firm and pretty strong. 14 Q. Okay. There's a dispute about 01714, your page 73. You 15 refer to "insightful feedback from JH on OFT/Ofcom 16 views." 17 Mr Smith's statement makes it clear he didn't know 18 OFT/Ofcom views at that point and the only evidence is 19 a telephone call which lasted 10 seconds at 10.10 in the 20 morning. The question is: where did you get that 21 information from? 22 A. Those call records are from my mobile and I also call 23 often from my office, so -- we don't have those. So it 24 might have been from a call in -- I know there's a text 25 saying "Let's speak" the evening before, so --</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 I wouldn't have triggered myself to write something like 2 this if I hadn't had a feedback or a reason to write it. 3 Q. If you look at the next email at 01715 at page 74, it's 4 clear that Mr Smith doesn't know the OFT view at that 5 stage, which is consistent with what I put to you in 6 relation to the previous email, that he didn't know the 7 view, therefore you can't have had any insightful 8 feedback from him about it. Do you see that issue? 9 A. I do, and I would love to understand the reason why it's 10 as it is, but this is nearly a year and a half ago. 11 I can't remember every -- 12 Q. One possible explanation, I gently suggest to you, that 13 there may be elements of exaggeration in what we're 14 seeing here. 15 A. I wouldn't think that's the case, given that that email 16 says I would feed back to my colleague. If there was 17 exaggeration, I wouldn't be able to feed back anything 18 to my colleague. 19 Q. Okay. We're moving forward now to 9 February, 20 page 01717, page 76. This is an email sent at 7.24 in 21 the evening, do you see that? 22 A. Yes. 23 Q. Before that email, there were four telephone calls which 24 lasted, in all, about half an hour, and they ran from 25 17.30 in the evening to 18.42. There was then the email Page 25</p>	<p>1 ability to implement, unfortunately it would be possible 2 as you could just include in the Articles of Association 3 ... [I'm missing the relevant words out]. Let's discuss 4 in the morning. It will be a very personal decision for 5 James. Let's see how we get through this final hurdle." 6 That's all the material we got. Can I ask you this, 7 the reference to Swan Lake there, where did you get that 8 from? 9 A. From my conversation with Adam. 10 Q. And who is the "he" in that sentence who is going in to 11 see Swan Lake? 12 A. Jeremy Hunt. I think Adam said, "I've just managed to 13 get him before he went in". 14 Q. So that is the call at 19.03 hours, which I suppose fits 15 in with when Swan Lake might have started, although our 16 researches reveal that Covent Garden wasn't showing Swan 17 Lake that evening, it was on 10 and 14 February. It was 18 Die Zauberflote at Covent Garden, but maybe it was 19 something else altogether. But anyway you can't assist 20 on that? 21 A. I'm afraid I can't. 22 Q. But the content, though, we can look six lines down: 23 "He understands this is a deal stopper for us and 24 shares our frustration." 25 And then what you put in quotes, "We all know what Page 27</p>
<p>1 and there was another call at 20.01 hours, which lasted 2 six minutes and 14 seconds. 3 A. I think -- sorry. I have three calls before that email. 4 Q. You have three, I have four. I don't think it's going 5 to matter too much. There was also a call out by 6 Mr Smith to Mr Hunt at one stage, and there were some 7 earlier text messages, which aren't particularly 8 revealing. So whatever we see in this email is really 9 derived from the content of the telephone calls you had. 10 A. I was not aware of the -- of course, of the Adam 11 Smith/Jeremy Hunt conversation. 12 Q. Yes, I've noted that down here actually. He called 13 Mr Hunt at 19.03 hours and the call lasted three minutes 14 and 23 seconds. Actually, having said that there aren't 15 relevant texts, there are relevant texts somewhere else. 16 I'll dig them out. It's pages 12780 and 12781. There's 17 a lot of material here one has to cross-reference, 18 Mr Michel. You're just going to have to bear with me. 19 A. Sure. 20 Q. 12780 says: 21 "Let me know if you get feedback from JH tonight. 22 We are working throughout." 23 And that was sent at 19.30 hours. And then there's 24 a later one just before 9 o'clock: 25 "Agree it is ridiculous and duplicative. As for Page 26</p>	<p>1 Ofcom's intentions are and have been from the start on 2 this", where does that quote come from? 3 A. Probably from my conversation with Adam. 4 Q. Do you think you're quoting him verbatim there or not? 5 A. I can't say. I can't remember the ... 6 Q. If you look a bit later on, or indeed following: 7 "He said that in truth this is a very bureaucratic 8 layer to be added, that even though on principles we 9 were not at all on board with it, it might be a price 10 worth paying for the deal to get a green light in 2 11 weeks." 12 This is part of the same point: we have to play the 13 long game because it's the sure way of landing the 14 desired outcome. Do you agree? 15 A. I think it's part of News Corp being told that although 16 we have worries, and that evening we had very big 17 worries as to the concessions we were asked to make, and 18 although we had those worries, we were asked to take 19 a long-term view and again accept those concessions 20 despite the strong remedy we had put forward. 21 Q. But you're putting as light or as neutral a gloss on 22 this as you possibly can. What it says is: 23 "It might be a price worth paying for the deal to 24 get a green light in 2 weeks." 25 I mean, the green light is the deal going ahead, Page 28</p>

7 (Pages 25 to 28)

<p>1 isn't it?</p> <p>2 A. Yes, it would be that agreeing to those concessions that</p> <p>3 are being asked from Ofcom would probably assuage</p> <p>4 everyone's concerns. Sorry, I'm not trying to put any</p> <p>5 gloss on it.</p> <p>6 Q. It continues:</p> <p>7 "He can't instruct his officials to get back to</p> <p>8 Ofcom as he is not supposed to be aware that we have</p> <p>9 received the letter and its content ... so we have to be</p> <p>10 very careful on this."</p> <p>11 So they're private exchanges of information which</p> <p>12 appear to be inappropriate, would you agree with that?</p> <p>13 A. I think he had been made aware of the letter, yes, and</p> <p>14 probably, as he says, the officials were not aware.</p> <p>15 Q. At the end:</p> <p>16 "I told him he had to stand for something ultimately</p> <p>17 and this was his chance to dismiss Ofcom's views and</p> <p>18 show he had some backbone. He said he couldn't ignore</p> <p>19 Ofcom, he had brought them into this OFT process to get</p> <p>20 some cover and in public debate he would get absolutely</p> <p>21 killed if he did such a thing."</p> <p>22 Are you sure that he said that?</p> <p>23 A. Yes, I mean it's my English. I might use words in</p> <p>24 a more melodramatic way than probably they're intended</p> <p>25 to be, but yes, I had -- we had a strong conversation</p> <p style="text-align: center;">Page 29</p>	<p>1 57 seconds but not the long. Is that fair or not?</p> <p>2 A. If -- now that I know how long the call was, yes,</p> <p>3 probably, I would ...</p> <p>4 Q. Okay. Page 01720, page 79. We're now on 11 February in</p> <p>5 the evening. The call data show 18 minutes' worth of</p> <p>6 calls, two calls. The second one was only about half an</p> <p>7 hour before you sent the email. Are you with me,</p> <p>8 Mr Michel?</p> <p>9 A. Yes.</p> <p>10 Q. Again, you didn't, I suppose, keep a note of what was</p> <p>11 being discussed, but are you confident that you've set</p> <p>12 out the contents of the conversation accurately?</p> <p>13 A. Yes, I would. I would stand by my content.</p> <p>14 Q. Including the sentence five lines down:</p> <p>15 "JH doesn't want this to go to the CC."</p> <p>16 Is that what he said, or rather what Mr Smith said</p> <p>17 on behalf of Mr Hunt?</p> <p>18 A. I believe it's written here, yes.</p> <p>19 Q. "He also said his officials don't want this to go</p> <p>20 further as JH believes it would kill the deal."</p> <p>21 Are you absolutely sure that that's what he said?</p> <p>22 A. I mean, I have no reason to believe that I would have</p> <p>23 written something that wouldn't reflect my conversation.</p> <p>24 Q. "He also knows that Ofcom is taking a very subjective</p> <p>25 and non-legal approach on the chairman issue and</p> <p style="text-align: center;">Page 31</p>
<p>1 around the fact that we believed -- I was speaking for</p> <p>2 News Corp -- that those were last-minute concessions</p> <p>3 being asked and we thought that it was going a bit too</p> <p>4 far.</p> <p>5 Q. You wouldn't have used words like "he had some backbone"</p> <p>6 to the Secretary of State personally, would you?</p> <p>7 A. Me?</p> <p>8 Q. No.</p> <p>9 A. If I had been in that situation? No.</p> <p>10 Q. This last sentence is recording what you told him, and</p> <p>11 some would say you're being a little bit peremptory, if</p> <p>12 not cheeky, with Mr Smith. Don't you agree?</p> <p>13 A. I think I reflect the frustration that we were</p> <p>14 discussing internally and I think I probably reflect</p> <p>15 some of the language we use in our team and hoping that</p> <p>16 our frustration could be relayed.</p> <p>17 Q. Then the next email, 01718, page 77, you say:</p> <p>18 "Just had strong and long exchange with him again</p> <p>19 now."</p> <p>20 The call data shows three minutes and 57 seconds</p> <p>21 worth of call, so the gentle suggestion to you,</p> <p>22 Mr Michel, is that that's an exaggeration. Would you</p> <p>23 accept that?</p> <p>24 A. As long or --</p> <p>25 Q. I suppose it could have been strong in the three minutes</p> <p style="text-align: center;">Page 30</p>	<p>1 understands the very serious/personal nature of it for</p> <p>2 us."</p> <p>3 A. Yes.</p> <p>4 Q. Again, are you wholly confident that is what was said?</p> <p>5 A. Yeah, and it reflects -- it's a strong issue at the</p> <p>6 time, which was that there was an ask from Ofcom that</p> <p>7 Mr Murdoch couldn't become the chairman of the new</p> <p>8 organisation Sky News that was going to be hived off</p> <p>9 from BSkyB and they were not -- it was not really</p> <p>10 a rationale for such a demand other than a judgment on</p> <p>11 the independence of Mr Murdoch and his ability to be</p> <p>12 chairman of that new outfit. So yes, it chimes with</p> <p>13 what the debate was at the time completely.</p> <p>14 Q. Weren't you beginning to get the impression now that</p> <p>15 DCMS were parti pris?</p> <p>16 A. I think I had the impression that they wanted us to</p> <p>17 follow every advice they were getting from the</p> <p>18 regulators, and that's what happened all the way. So</p> <p>19 every time we had -- we were trying to make sure that we</p> <p>20 didn't have to concede anything more, I think they were</p> <p>21 trying to get us, as we -- you used the sort of -- you</p> <p>22 made reference to that narrative earlier, the long-term</p> <p>23 view.</p> <p>24 Q. But there were two things going on here. They'd made it</p> <p>25 absolutely clear to you through Mr Smith they had no</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 choice politically and legally but to follow the expert 2 advice, but nonetheless, look at the long game. The 3 long game would be that the deal was more likely to be 4 secured, and if you look at all the commentary, the 5 chit-chat around this, this email and all the others, 6 the impression one might be said to be getting is of an 7 approach which was favourable to you. If we're not 8 going to use the term <i>parti pris</i>, we'll use that 9 formulation. Would you at least accept that?</p> <p>10 A. I think in the conversations they were having with us, 11 they was definitely sort of trying to encourage us to 12 stay in the game, but no, I wouldn't use the word <i>parti</i> 13 <i>pris</i>.</p> <p>14 Q. Okay. Okay. If I can move on now to 01732, Mr Smith 15 doesn't recognise this email at all. It's your page 91.</p> <p>16 A. Thank you.</p> <p>17 Q. There's evidence of four conversations by phone, which 18 lasted between seven or eight minutes in all. But there 19 aren't any surrounding texts. So is there any further 20 illumination you could provide to us on this, apart from 21 I suppose you would say that whatever was discussed in 22 the call we see written down here?</p> <p>23 A. Yes. I think I'd just had the call, as you said.</p> <p>24 Q. Okay. I move on now to the night of 2/3 March, which 25 starts at 01742, your page 101.</p> <p style="text-align: center;">Page 33</p>	<p>1 press at 7 o'clock. So we were -- there was a lot of 2 final redactions that had to be done that night.</p> <p>3 MR JAY: Yes, and it was important to get the statement out 4 before the markets opened at 8.30 in the morning --</p> <p>5 A. Yes.</p> <p>6 Q. -- because this had been rumoured; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And the share price was going to rise, presumably?</p> <p>9 A. Yes, there had been an article I think in the FT or -- 10 and so it was very dangerous not to go very quickly 11 because you could assume that by publishing an article, 12 the consultation was starting, and the public debate had 13 been triggered.</p> <p>14 Q. And what is also relevant is that OFT were themselves up 15 all night as well negotiating or discussing with 16 News Corp's lawyers about the UILs; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. So that's the picture. There are three emails. The one 19 we're going to look at most closely is 01744, page 103. 20 This is at 25 past three in the morning, and you are 21 being told that Mr Hunt is mind to accept the 22 undertakings in lieu and will release around 7.30 am to 23 the market. So the statement to Parliament I think was 24 going to be in the afternoon, but he was going to brief 25 the media in advance of the markets opening, is that it?</p> <p style="text-align: center;">Page 35</p>
<p>1 A. Thank you.</p> <p>2 Q. So we understand the context, this was an important 3 event in the evolution of the bid, because the morning 4 of 3 March Mr Hunt gave an announcement to Parliament 5 that he was minded to accept the UILs, and that 6 triggered the first consultation process.</p> <p>7 A. Yes, it did.</p> <p>8 Q. Are you with me?</p> <p>9 A. Yes.</p> <p>10 Q. But during the course of the early hours of the morning 11 there was a tremendous amount of activity both by text 12 and by telephone. In relation to telephone calls, at 13 nine minutes past one in the morning, a call for 12 14 minutes, 18 minutes. One minute to three in the 15 morning, one minute and 33 seconds, and at five minutes 16 past three, 15 minutes and five seconds, and at the same 17 time, as we'll see with Mr Smith, we're not going to 18 look at them now, there was a flurry of text messages. 19 You probably recall those.</p> <p>20 A. It was a busy night.</p> <p>21 LORD JUSTICE LEVESON: This is in the middle of the night?</p> <p>22 A. Completely, yes.</p> <p>23 MR JAY: Yes.</p> <p>24 A. It was to prepare the -- the statement was to be ready 25 for 7.30 in the morning, and to be circulated to the</p> <p style="text-align: center;">Page 34</p>	<p>1 A. I think the statement might have been in the morning, 2 I think Adam will be able to help on that. I can't 3 remember, sorry.</p> <p>4 Q. You were given by Mr Smith, if this is accurate, 5 a preview of what the statement was going to contain 6 both in terms of the consultation period, which was only 7 15 days, and that Mr -- there's a quote from Mr Hunt: 8 "I am consulting. It addresses all media plurality 9 concerns." 10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Were Allen & Overy copied in to any of these emails, do 13 you know?</p> <p>14 A. That night?</p> <p>15 Q. Yes.</p> <p>16 A. That was not my key focus at 3 o'clock.</p> <p>17 Q. Okay.</p> <p>18 A. But I would assume, because I have copied the legal -- 19 oh no, they were, actually, sorry, yes. The Allen & 20 Overy person is on that email.</p> <p>21 Q. Okay.</p> <p>22 LORD JUSTICE LEVESON: Is that --</p> <p>23 A. Antonio Bavasso.</p> <p>24 LORD JUSTICE LEVESON: That's an acquisitions lawyer, is it?</p> <p>25 A. Yeah, he's a great anti-trust lawyer.</p> <p style="text-align: center;">Page 36</p>

<p>1 LORD JUSTICE LEVESON: Yes.</p> <p>2 MR JAY: At 01745 there's a further email you send, which is</p> <p>3 an update. Mr Smith doesn't accept he's the source of</p> <p>4 much of that information. Are you able to assist us on</p> <p>5 that?</p> <p>6 A. So the email says "JH and co", probably because there's</p> <p>7 different elements of sourcing. Probably two or three</p> <p>8 things come from the conversation with Adam, others from</p> <p>9 other sources, I can't -- it looks to me like it's an</p> <p>10 update email from me at 10 o'clock just to give some</p> <p>11 sense as to where the debate is going in Westminster.</p> <p>12 Q. Okay. To be fair, everybody was probably a bit tired by</p> <p>13 then. Can we move on to 01748 at 107, Mr Michel. We're</p> <p>14 now Thursday, 10 March. The one-hour catch-up you refer</p> <p>15 to is the 34-minute telephone call, so it's just a bit</p> <p>16 of poetic licence there.</p> <p>17 A. It's French time.</p> <p>18 Q. It's not going to change the meaning of the world. But</p> <p>19 Mr Smith does dispute one important sentence. Four</p> <p>20 lines into it, do you see:</p> <p>21 "He called all the key editors last Thursday."</p> <p>22 That must be a reference to Mr Hunt although the</p> <p>23 message is coming to you from Mr Smith.</p> <p>24 A. Yes.</p> <p>25 Q. "And Paul Dacre was clear that their campaign was purely</p> <p style="text-align: center;">Page 37</p>	<p>1 successful at any stage.</p> <p>2 If I remember, there were a lot of items raised by</p> <p>3 the media coalition in terms of the process,</p> <p>4 representations made, whether the Secretary of State</p> <p>5 exercised his powers to look at the UIL and not refer</p> <p>6 it, you know.</p> <p>7 Q. Mm. I mean, do you see the possible irony in that</p> <p>8 sentence, looking back on it, or not?</p> <p>9 A. No.</p> <p>10 Q. You don't?</p> <p>11 A. What do you mean explicitly?</p> <p>12 Q. Well, that -- to be absolutely blunt, that if this</p> <p>13 material were evidence in a judicial review application</p> <p>14 and --</p> <p>15 A. Oh, sorry, yes.</p> <p>16 Q. -- and the coalition had adduced it because they got</p> <p>17 hold of it in some way, which perhaps would have been</p> <p>18 a bit surprising --</p> <p>19 LORD JUSTICE LEVESON: I think you mean the alliance.</p> <p>20 MR JAY: The alliance, yes.</p> <p>21 A. No, I see your point.</p> <p>22 Q. You see the point?</p> <p>23 A. Completely. And I also see your point if you refer to</p> <p>24 in the case that the media coalition didn't have as much</p> <p>25 representations as we had to DCMS as well.</p> <p style="text-align: center;">Page 39</p>
<p>1 motivated for commercial reasons."</p> <p>2 Mr Smith's position is that he wouldn't have known</p> <p>3 that, therefore he doesn't know how you would have put</p> <p>4 this in the email. Can you comment on that, please?</p> <p>5 A. I think if I've put it in the email, it's because we</p> <p>6 discussed it. I can't see how else I would have been</p> <p>7 able to know that.</p> <p>8 Q. So your point is, well, unless he told you that, it's</p> <p>9 not something you could have invented?</p> <p>10 A. I have no reason to know whether the Secretary of State</p> <p>11 has met editors or not. Probably those editors were</p> <p>12 part of the media coalition or it was a briefing to</p> <p>13 editors. I have no idea.</p> <p>14 Q. Can I ask you about the reference to judicial review:</p> <p>15 "He doesn't see any rationale for a successful one."</p> <p>16 To some public lawyers there is a possible irony in</p> <p>17 that sentence, but never mind.</p> <p>18 "And it won't affect the consultation process. He</p> <p>19 does not see how they can attack the process as he's</p> <p>20 been so painfully rigid and careful."</p> <p>21 Can we be clear, where does that come from?</p> <p>22 A. I think there were discussions whether or not there was</p> <p>23 going to be a JR launched by the media coalition.</p> <p>24 I think it was an item that was ongoing. I probably</p> <p>25 queried his views as to whether or not a JR could be</p> <p style="text-align: center;">Page 38</p>	<p>1 Q. The other point on this email, two-thirds of the way</p> <p>2 down:</p> <p>3 "On 21 March, his team will look at all the</p> <p>4 submissions. It should take 3/4 days."</p> <p>5 Again I suppose logically you've either made that up</p> <p>6 or Mr Smith told you that. One can't see any other</p> <p>7 possible option.</p> <p>8 "Lots will be pure anti-Murdoch ones and he doesn't</p> <p>9 expect any groundbreaking issue."</p> <p>10 Are you sure that's what Mr Smith said?</p> <p>11 A. Yes, it's the only reason why I would have written that.</p> <p>12 Q. It might have represented your thinking, as it were, and</p> <p>13 you therefore glossed it --</p> <p>14 A. I think we had discussions about the number of</p> <p>15 submissions that were put to DCMS and that most of them,</p> <p>16 if I remember, were just iterative petitions that came</p> <p>17 into the department, and most of them were written very</p> <p>18 explicitly on the rationale that this should be a --</p> <p>19 this shouldn't be allowed to proceed because of the</p> <p>20 Murdoch element.</p> <p>21 Q. But it's almost as if he were siding with you against</p> <p>22 the anti-Murdoch thesis. Do you see that?</p> <p>23 A. Yes, I think he was giving me some colour as to the type</p> <p>24 of submissions they were getting.</p> <p>25 Q. Okay. Page 01751, 110 on the internal numbering. You</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 say:</p> <p>2 "JH would welcome our critical views on the</p> <p>3 Slaughter & May submission to help him forge his</p> <p>4 arguments."</p> <p>5 Is that what Mr Smith said or is that an inference</p> <p>6 which you draw from other evidence?</p> <p>7 A. I don't know. Was there a call at the time? I think</p> <p>8 I might draw it from other conversation I had with him.</p> <p>9 Q. But again the clear implication is -- maybe you might be</p> <p>10 beginning to agree with this now -- that if this is</p> <p>11 accurate, Mr Smith is on your side because he is wanting</p> <p>12 your assistance to assail the arguments being put up by</p> <p>13 the other side. You must see that, Mr Michel?</p> <p>14 A. I see your point and I can see why you would infer that</p> <p>15 from those conversations. I could also see from the way</p> <p>16 I was looking at it that he wanted probably to hear the</p> <p>17 arguments from all the different corners, all the</p> <p>18 different sort of parties to the transaction. So if he</p> <p>19 had the submission from the media coalition, probably he</p> <p>20 wanted to hear the argument from the other side.</p> <p>21 Q. Yes, but he wasn't going to share News Corp's views</p> <p>22 given to him privately with the media coalition, was he?</p> <p>23 A. I don't know.</p> <p>24 Q. But you couldn't reasonably have thought he was going</p> <p>25 to, could you?</p> <p style="text-align: center;">Page 41</p>	<p>1 helpful for the team.</p> <p>2 Q. Okay. 01781, page 140. I'm making it clear I'm not</p> <p>3 covering everything because we can't. I think this one</p> <p>4 is possibly a bit of a highlight.</p> <p>5 LORD JUSTICE LEVESON: Neither is it actually necessary to</p> <p>6 for the purpose of the exercise.</p> <p>7 MR JAY: No. Thank you.</p> <p>8 The call data demonstrate, Mr Michel, that there was</p> <p>9 a relevant call which lasted 19 minutes and 20 seconds.</p> <p>10 A. Just before the email was written?</p> <p>11 Q. Yes. No, actually we think that one was sent -- the</p> <p>12 call was after the email was written, but there may</p> <p>13 be --</p> <p>14 A. I think it's because there's issues of summer time on my</p> <p>15 mobile phone, as I've been told.</p> <p>16 Q. I'm not sure I'm going to be able to work out -- we're</p> <p>17 certainly in summer time, because we're now 3 June, but</p> <p>18 I'm not sure it's critical. There were earlier calls</p> <p>19 that morning, two short calls, but what the email refers</p> <p>20 to is "a clear blame game going on regarding the delay</p> <p>21 between lawyers, us and Ofcom" which Mr Smith denies</p> <p>22 strongly. Is this something which you possibly have</p> <p>23 overextrapolated from what he said?</p> <p>24 A. No, I think we had some debates, by texts and also on</p> <p>25 calls, about why there was a delay and -- we definitely</p> <p style="text-align: center;">Page 43</p>
<p>1 A. I have no reason to believe one way or another.</p> <p>2 Q. Okay. 10763. This isn't a big point, but Mr Smith</p> <p>3 draws it out. If you look at the email at the top of</p> <p>4 01764, page 123 --</p> <p>5 A. Yes.</p> <p>6 Q. -- because there's an issue with British standard -- GMT</p> <p>7 and British summer time on the timings of these emails,</p> <p>8 we know that 01764 was sent by Mr Smith before you sent</p> <p>9 01763. Do you follow me?</p> <p>10 A. Yes. I think I was abroad at the time as well, so that</p> <p>11 might not help either.</p> <p>12 Q. Okay. I think Mr Smith's point is that if you look at</p> <p>13 the top of your 123, our 01764, you haven't correctly</p> <p>14 reflected what he said in that email in your email to</p> <p>15 Mr Murdoch and others. Might you agree with that?</p> <p>16 A. Sorry, I can't find the other one.</p> <p>17 Q. Pages 122 and 123.</p> <p>18 A. Oh yes.</p> <p>19 Q. Look at 123 first and then 122.</p> <p>20 A. Yes, I think I've put some of my thoughts as well on</p> <p>21 this in order to --</p> <p>22 Q. Okay. So if we accept that some of it is your thinking,</p> <p>23 which isn't gathered from Mr Smith, we're in agreement,</p> <p>24 are we?</p> <p>25 A. Yes. Sometimes I would add some elements that can be</p> <p style="text-align: center;">Page 42</p>	<p>1 had discussions to -- the sort of level of relationship</p> <p>2 between the different legal teams. I think everyone was</p> <p>3 a bit impatient and frustrated by the process and we</p> <p>4 definitely had the discussion on this.</p> <p>5 Q. Item 5 is disputed, as is item 12. Although item 12 is</p> <p>6 arguably consistent with many things we've read in</p> <p>7 earlier emails?</p> <p>8 A. Yes, I think item 5 would have been something I would</p> <p>9 have been told. There's no reason why I would have</p> <p>10 written it.</p> <p>11 Q. About this time, though, the atmosphere begins to</p> <p>12 change. A couple of reasons, I think. First of all, if</p> <p>13 you look at 01783, page 142, you were obviously very</p> <p>14 frustrated by the delay, and as you say in that email,</p> <p>15 you floated the threat that if this were to go on for</p> <p>16 more weeks, "we could decide at any moment to withdraw."</p> <p>17 Was that a genuine threat, Mr Michel?</p> <p>18 A. I think there was a -- I was reflecting the internal</p> <p>19 frustrations from high up.</p> <p>20 Q. But was it a genuine threat or was it just --</p> <p>21 A. From my part?</p> <p>22 Q. Mm.</p> <p>23 A. No, no, I was reflecting -- I was definitely</p> <p>24 communicating a position, which was that at the time we</p> <p>25 were even thinking why didn't we go to Competition</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 Commission? It would have taken less time, you know.</p> <p>2 Q. And then you tried at 01784, page 143, at another bash</p> <p>3 at a meeting, this time with the Minister of State?</p> <p>4 A. Yes.</p> <p>5 Q. Which was if I may say so somewhat bold after all the</p> <p>6 rebuffs you had earlier received and to be fair to</p> <p>7 Mr Smith he pointed that out. He said:</p> <p>8 "You cannot seriously think that Ed meeting with</p> <p>9 News Corp whilst the deal is going on wouldn't be an</p> <p>10 issue."</p> <p>11 A. So I had instigated that demand in order to discuss</p> <p>12 other issues than the BSkyB deal with the minister. It</p> <p>13 was very clear from every correspondence I made to the</p> <p>14 minister that there were a whole bunch of issues that</p> <p>15 were happening in our industry which I wanted -- we</p> <p>16 needed to make those representations at the time.</p> <p>17 Q. But you characterised that as "a very punitive decision"</p> <p>18 at the top of the page. You felt "victimised",</p> <p>19 Mr Michel.</p> <p>20 A. It was a very cheeky way -- I didn't feel victimised too</p> <p>21 much.</p> <p>22 Q. The atmosphere is, I think, beginning to chill for</p> <p>23 perhaps a number of reasons, some of which are</p> <p>24 supervening events. Can I look at the email of 7 July,</p> <p>25 page 01799, page 158.</p> <p style="text-align: center;">Page 45</p>	<p>1 got the information.</p> <p>2 MR JAY: The other possibility is that Mr Smith's evidence</p> <p>3 is incorrect and he did know. We will just have to wait</p> <p>4 and see. But all I can do at this stage is put to you</p> <p>5 what I understand Mr Smith's evidence is going to be.</p> <p>6 Do you understand?</p> <p>7 As a matter of fact, I think it's correct, actually,</p> <p>8 that that was government thinking as at 7 July 2011,</p> <p>9 which is an interesting --</p> <p>10 LORD JUSTICE LEVESON: I'm not sure that it wasn't initially</p> <p>11 announced as such, but that might have been later.</p> <p>12 MR JAY: It was later. It's a sneak preview into what was</p> <p>13 then government thinking.</p> <p>14 A. Sir, I can completely imagine -- I mean, I have called</p> <p>15 the latest on Rubicon. Whether or not the first item</p> <p>16 was from Adam or not I can't confirm or ...</p> <p>17 LORD JUSTICE LEVESON: Does that mean you might be talking</p> <p>18 to somebody else as well?</p> <p>19 A. No, I don't think so. That's why I said straight away</p> <p>20 that it was from this.</p> <p>21 MR JAY: It matches up with the call you had within 30</p> <p>22 minutes of writing this email.</p> <p>23 A. Yes.</p> <p>24 Q. And we haven't seen evidence of any other call.</p> <p>25 The email which Rebekah Brooks provided us with, you</p> <p style="text-align: center;">Page 47</p>
<p>1 A. Yes.</p> <p>2 Q. We know from call data that there was an 11 minute, 8</p> <p>3 second conversation at 17.35 hours, which was therefore</p> <p>4 nearly half an hour before you sent this email. Are we</p> <p>5 in agreement with that?</p> <p>6 A. Yes.</p> <p>7 Q. Some of the information in this email was not known to</p> <p>8 Mr Smith, he will say, in particular the reference to</p> <p>9 the two possible public inquiries. Do you see that?</p> <p>10 The question is: where did you get that information</p> <p>11 from, Mr Michel?</p> <p>12 A. Sorry, I'm trying to find -- oh, the first item, sorry,</p> <p>13 yes.</p> <p>14 Q. Indeed.</p> <p>15 A. From the conversation.</p> <p>16 Q. So you're clear that that's what he said, are you?</p> <p>17 A. Well, I think I would have drawn this from our</p> <p>18 conversation, yes.</p> <p>19 LORD JUSTICE LEVESON: You might have been talking to</p> <p>20 somebody else, I don't know, but if Mr Smith said he</p> <p>21 didn't know how these inquiries were going to be</p> <p>22 organised, it's quite difficult to see how he could have</p> <p>23 told you.</p> <p>24 A. I can completely accept the benefit of the doubt on</p> <p>25 this. All I can think is that that's where I would have</p> <p style="text-align: center;">Page 46</p>	<p>1 remember that one?</p> <p>2 A. Yes.</p> <p>3 Q. It is MOD300002606. Do you have that to hand?</p> <p>4 A. Yes, I've just had it here.</p> <p>5 Q. Mr Smith is clear about this one, that he had had no</p> <p>6 conversation with you about these matters at all,</p> <p>7 particularly the sentence:</p> <p>8 "JA is now starting to look into phone hacking</p> <p>9 practices more thoroughly and has asked me to advise him</p> <p>10 privately in the coming weeks and guide his and</p> <p>11 Number 10's position."</p> <p>12 So the -- I think this is something which I have to</p> <p>13 put to you starkly that you're simply wrong about,</p> <p>14 Mr Michel. Can I ask you to comment on that?</p> <p>15 A. Sure. I think we had a discussion that day for 24</p> <p>16 minutes?</p> <p>17 Q. Yes.</p> <p>18 A. A few hours before? And I can completely vouch for the</p> <p>19 fact that we discussed those issues with Adam.</p> <p>20 Regarding the last sentence I think has triggered a lot</p> <p>21 of comments. You probably put it on my sort of English</p> <p>22 way of -- sorry, way of writing English. "Guide" might</p> <p>23 be too strong a word, probably, but I think that Adam</p> <p>24 will probably recognise that there was always from me an</p> <p>25 offer to brief the department and departments on the</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 ongoing issues at News International, and that it was 2 something that was welcomed at that time. 3 MR JAY: There's some limited further material, but shall we 4 break? 5 LORD JUSTICE LEVESON: I think we ought to just have a break 6 for the shorthand writer. 7 (3.18 pm) 8 (A short break) 9 (3.27 pm) 10 MR JAY: One catch-up point, Mr Michel, then some text 11 messages. I said that on 24 March 2011 you provided 12 material for Mr Smith which was rebuttal, as it were, 13 for the Slaughter & May material. We actually have the 14 submission which you provided Mr Smith at 11955 and 15 following, which was a table containing on the left-hand 16 side the Slaughter & May arguments, on the right-hand 17 side your rebuttal. And you said to Mr Smith: 18 "Hope it's helpful for this afternoon's meeting." 19 This was a meeting that you knew the department were 20 having with the Slaughter & May team; is that right? 21 A. Yes, with the media coalition. 22 Q. Yes. And then some text messages. This is with other 23 individuals. I'm going to run through these quite 24 quickly, giving the page numbers at each point. First 25 is 13441. On 13 May 2011, you sent a text to Craig</p> <p style="text-align: center;">Page 49</p>	<p>1 A. It was social. The idea was to introduce Will to Craig, 2 actually. 3 Q. So nothing more than that; is that right? 4 A. Yes. 5 Q. At 13478, message timed on 6 July at 17.29. 6 A. Yes. 7 Q. You sent a text to Gabby Bertin -- was she at Number 10 8 as well? 9 A. Yes, she's spokeswoman to the Prime Minister. And 10 number 2. 11 Q. And the message says: 12 "And thank you for your messages to Rebekah last 13 night." 14 So these may be or might be the indirect 15 communication that we heard Mrs Brooks talk about when 16 she gave evidence. It matches in with that. Is that 17 what you understood that to be? 18 A. I don't know what the message contained. I only knew 19 that Rebekah told me she had got messages from Gabby. 20 Q. Then there's finally some communications with 21 Mr Harrison, who is Mr Osborne's special adviser; is 22 that right? 23 A. Yes, Chief of Staff. 24 Q. The first is at 13537, 9 November 2010. You say to him: 25 "Rupert [that's his first name], just spoke with</p> <p style="text-align: center;">Page 51</p>
<p>1 Oliver, who was of course at Number 10, stating: 2 "Phone hacking case to be launched against 3 Daily Mail on Monday." 4 Do you know anything about that? 5 A. Yes, there was a rumour I had been told. 6 Q. No more than that? 7 A. No, I don't think it --well, it never happened. 8 Q. Okay. At 13453, you were trying to arrange a dinner 9 with someone called Will. Was that Will Lewis? 10 A. Yes. 11 Q. Who then was of course News International, and Craig 12 Oliver; is that correct? 13 A. Yes. 14 Q. Would you -- 15 A. Which didn't take place. 16 Q. You wanted to find a discreet location, you found one, 17 but I think only two out of the three of you made it but 18 not Mr Oliver; is that right? 19 A. The dinner was going to be with the wives and the idea 20 was to -- there were two locations floated and we ended 21 up in a location which was not discreet at all. 22 Q. The dinner in fact was no wives, according to 13453. 23 A. Yes, because one of them was unable to come. 24 Q. Was this a social occasion or were you going to discuss 25 anything significant?</p> <p style="text-align: center;">Page 50</p>	<p>1 James. It would be helpful if George [that's 2 Mr Osborne] were to send a letter to Vince on our Sky 3 merger and its economic importance separate from the 4 Ofcom process. Do you think it's a possibility? I can 5 of course help with the content. Best, Fred." 6 You were trying to enlist the Chancellor of the 7 Exchequer's support for the bid, weren't you? 8 A. Yes, I was trying to get -- to see whether or not the 9 Treasury would make representation to Vince Cable and 10 suggested they could provide information on the 11 arguments we had on plurality. This was never followed 12 through, from my knowledge. 13 Q. Because Mr Osborne was in China and his special adviser 14 said that he would raise it with him on his return and 15 I've seen no evidence that that was followed through; is 16 that correct? 17 A. No, I don't think it was followed through. 18 Q. And then finally a message you sent again to 19 Mr Harrison, 10 July, 13537. 20 "Quick question for your advice. Do you think it 21 would be possible/helpful to get a senior government 22 person to come out condemning strongly phone hacking, 23 ask for a thorough police investigation but insisting on 24 the need for the legal process to be followed? 25 Incredible that a business decision on a massive</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 takeover could be left to Parliament to 2 oppose/influence, no? Hope all is well. Fred." 3 So what were you trying to do, Mr Michel? 4 A. Sorry I can't find the text in front of me -- oh, I have 5 it here, sorry. I think that was at the time when 6 Parliament was about to take a vote on whether the BSKyB 7 bid should proceed or not based on the very sad events 8 of Milly Dowler and the sort of ensuing events, and 9 there were different conversations happening there, 10 which was everyone so far had indicated that those two 11 issues were separate, and I think I was voicing our view 12 that a thorough police investigation should take place 13 and should be seen through. The takeover side of things 14 might not be right to be voted upon by Parliament, given 15 that it was a business transaction, and it was a view 16 internally that was basically that Parliament might not 17 be the right place to opine on a commercial transaction. 18 Q. Well, wasn't it slightly more devious than that, 19 Mr Michel? That you were hoping that the government 20 spokesman would make a strong statement on phone 21 hacking, which would draw fire away from the opposition 22 to the BSKyB bid, and therefore possibly facilitate its 23 passage through Parliament, and that in a roundabout way 24 was what you were trying to persuade someone to do on 25 behalf of News Corp?</p> <p style="text-align: center;">Page 53</p>	<p>1 of it is not arguably material. It has been read, it 2 has been analysed, it's been noted, but I just haven't 3 drawn attention to it with a particular witness. 4 LORD JUSTICE LEVESON: I understand that. I'm perfectly 5 content about that, I just want to make the point that 6 I would be very keen that pressure wasn't put on the 7 team to prioritise what other people want to go on the 8 website. 9 MR JAY: Certainly. 10 LORD JUSTICE LEVESON: As opposed to what I feel is the most 11 important material that ought to go into the public 12 domain quickly. It will all be there eventually. 13 MR JAY: It certainly will. 14 LORD JUSTICE LEVESON: The other thing I ought to do is to 15 express my gratitude to Linklaters for the obvious work 16 they've put in to putting all this material together in 17 a very short order, and I do so. 18 MR JAY: Thank you, Mr Michel. 19 The next witness is Mr Smith, please. 20 LORD JUSTICE LEVESON: Thank you. 21 MR ADAM JOHN SMITH (affirmed) 22 Questions by MR JAY 23 MR JAY: Your full name, please. 24 A. Adam John Smith. 25 Q. You've provided us with a witness statement which is</p> <p style="text-align: center;">Page 55</p>
<p>1 A. No, I wouldn't agree with that interpretation. 2 Q. Okay. I've been asked to put to you this question. Had 3 the bid gone through, as a consequence of your efforts 4 or otherwise, would have you expected to have obtained 5 a substantial bonus? 6 A. Myself? 7 Q. Mm. 8 A. Related to the Sky bid? 9 Q. Yes. 10 A. No, it was never put to me that if the Sky bid was going 11 to get through, I would get a substantial bonus. 12 I think bonuses in our company are annually reviewed and 13 based on a whole bunch of different things. I was -- 14 that was never put to me, no. 15 MR JAY: Okay. Thank you, Mr Michel. 16 LORD JUSTICE LEVESON: Thank you. 17 Mr Jay, you've put a body of material to Mr Michel. 18 What is it intended should form part of the record? I'm 19 not saying when it enters the public domain because 20 there's clearly an enormous amount of work involved in 21 doing that, but -- 22 MR JAY: All the disclosed material should form part of the 23 record. The fact that I've only referred to about 24 a tenth of it and will continue to do so by the time we 25 conclude Mr Smith's evidence doesn't mean that the rest</p> <p style="text-align: center;">Page 54</p>	<p>1 dated 18 May and also with a mass of materials which we 2 have put together in bundles and disclosed. Are you 3 content to confirm the truth of your statement in line 4 with your signature and the statement of truth which we 5 see? 6 A. There's one small correction, if I may, Mr Jay. 7 Q. Certainly. 8 A. Paragraph 48, I reference meetings that I had, and I say 9 that they were between June and July 2011. That should 10 have been January. The meetings themselves are then 11 from January. 12 MR JAY: Thank you. 13 LORD JUSTICE LEVESON: Not surprisingly, considering the 14 first meeting you identify was in January. 15 A. Yes. 16 LORD JUSTICE LEVESON: Mr Smith, this can't be an easy time 17 for you. I'm very grateful to you for the obvious time 18 and trouble you've taken putting this statement 19 together. 20 A. Thank you. 21 MR JAY: Mr Smith, we're going to start with your career 22 history, which you cover on page 09027. Can I check, 23 please, that you're working from the same numbers on the 24 bottom right? If you're not, it's page 2 on -- 25 A. Page 2, yes.</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

<p>1 Q. You were at Durham University between 2000 and 2003 and 2 studied history. You then went to a public affairs 3 agency. You were appointed Parliamentary Researcher to 4 Mr Hunt when he was in opposition in June 2006. You 5 then became his Chief of Staff in July 2007 when he was 6 appointed Shadow Secretary for Culture, et cetera. And 7 then at the General Election you became his special 8 adviser; is that right? 9 A. Yes, that's correct. 10 LORD JUSTICE LEVESON: Mr Smith, do you mind if I ask 11 a somewhat impertinent question? How old are you? 12 A. I'm 30. 13 LORD JUSTICE LEVESON: Thank you. 14 MR JAY: In terms of the team with whom you've been working, 15 this is paragraph 12 of your statement, the team you say 16 is quite small, 15 or so people. You've all worked 17 incredibly closely together, and the key members of the 18 team remained in their positions for nearly three years; 19 is that right? 20 A. Yes. That's right, yes. 21 Q. Given the experience you accumulated, you were of some 22 assistance in drafting the culture, media and support 23 sections of the Conservative Party Manifesto in 2010, 24 the sort of role someone like you would be expected to 25 undertake; is that fair? Page 57</p>	<p>1 wanted to focus on during his time at the DCMS and knew 2 what he thought about each of those areas. 3 Q. Thank you. Now, special advisers, please. This is 4 page 4, our page 09029. There were only two special 5 advisers within the department, because DCMS is quite 6 a small government department, isn't it? 7 A. Yes. 8 Q. And your colleague was concerned primarily with liaising 9 with the press and you were concerned with policies; is 10 that right? 11 A. Yes. When we'd worked together in opposition, we had 12 divided the roles that way and they just naturally 13 continued when we were in government. 14 Q. When you were appointed a special adviser, you were 15 provided with relevant contractual documents, including 16 the special adviser's code of conduct, and you refer to 17 that at paragraph 23 of your statement, page 5, our 18 page 09039. We note from clause 3 of the code that 19 there's absolutely nothing there about advising 20 ministers in a quasi-judicial role. Do you agree with 21 that? 22 A. Yes. 23 Q. Am I also right in saying that the concept of 24 a quasi-judicial role or function was not one which was 25 well familiar either to this department or to you in Page 59</p>
<p>1 A. Yes, because I'd been working on those policies with 2 Mr Hunt in the run-up to that period. 3 Q. Can I ask you to elaborate on paragraph 17 where you 4 refer to a very close working relationship with Mr Hunt, 5 in your own words. How did that develop and what are 6 the manifestations of that relationship? 7 A. Well, we'd obviously by that stage worked together for 8 quite a number of years, and as I said, the teams that 9 we worked in were very small, and I sort of reported 10 directly in to Mr Hunt and spent quite a lot of time 11 with him and co-wrote quite a few documents and speeches 12 that sort of thing. So over the time that we worked 13 together, we got to know how each other worked, I got to 14 know what he liked and expected from his members of 15 staff, and likewise he got to know how I worked and how 16 he could use me and how I could be of assistance to him. 17 Q. Over the course of time, did you get to know his 18 thinking on relevant issues of policy? 19 A. Yes, mainly through, you know, discussing them with him, 20 but yes, I did. 21 Q. And so by the time we reach the relevant period for us, 22 which is June 2010, were you extremely well acquainted 23 with his philosophy, his policy, viewpoint, his 24 political standpoints generally? 25 A. Yes, and sort of in particular I knew very much what he Page 58</p>	<p>1 particular until you were bequeathed it on 21 December 2 2010? 3 A. That would be right, yes. 4 Q. Because, for obvious reasons, DCMS did not have 5 regulatory functions, contrast BIS? 6 A. Exactly, yes. 7 Q. Clause 5 of the model contract you refer to, 8 paragraph 24, our page 09031, there is a general 9 obligation there that: 10 "You shall not without authority disclose official 11 information which has been communicated in confidence in 12 government or received in confidence from others." 13 Do you see that? 14 A. Yes, I do. 15 Q. And the responsibility for discipline, paragraph 25, 16 resides with the minister who made the appointment, so 17 it's personal to him, but can I understand, please, what 18 if any did you see the role of the Permanent Secretary 19 within the department? Did he have a supervisory role 20 over you, in your opinion? 21 A. Well, the Permanent Secretary is responsible for all 22 officials in the department, so my understanding was 23 that included special advisers, who were albeit only 24 temporary civil servants, but the difference was that 25 special advisers are appointed personally by the Page 60</p>

15 (Pages 57 to 60)

<p>1 Secretary of State rather than recruited in the normal 2 way that civil servants would be.</p> <p>3 Q. So in terms of your line manager, if that's a correct 4 concept vis-a-vis someone like you, who was your line 5 manager?</p> <p>6 A. I didn't really have a line manager, if you like. 7 I reported in to Mr Hunt and would sort of meet with and 8 talk with the senior officials, including the Permanent 9 Secretary, but there was no sort of manager in that sort 10 of strictest sense of the word, no.</p> <p>11 Q. Who then carried out your performance appraisal, which 12 you set out in paragraph 32 of your statement? Was that 13 Mr Hunt or was it someone else?</p> <p>14 A. We were asked by Number 10 to provide five or six 15 individuals. One of them had to be our Secretary of 16 State, another one the Permanent Secretary, and then 17 other than that we could ask either other officials or 18 Coalition colleagues or other special advisers and they 19 would then fill in a form that was then sent in to 20 Number 10.</p> <p>21 LORD JUSTICE LEVESON: This is known as a 360-degree 22 appraisal?</p> <p>23 A. Yes.</p> <p>24 LORD JUSTICE LEVESON: Round the people working around you?</p> <p>25 A. Yes. So it would be people senior to me, obviously,</p> <p style="text-align: center;">Page 61</p>	<p>1 special adviser had split the duties between press 2 handling and policy work, so that's how we continued it 3 in government. He gave me specific instructions on 4 occasions, as I detail later, which we may come onto.</p> <p>5 Q. Yes. So a specific job or task would obviously require 6 a specific instruction, but in terms of how generally 7 you should comport yourself, that was something for you 8 to work out with reference to the documents you were 9 provided and your own common sense; is that right?</p> <p>10 A. Yes, and my understanding of what Mr Hunt expected of 11 me.</p> <p>12 Q. Thank you. In terms of the way the department worked as 13 regards its meetings, this is paragraph 29, Mr Smith, 14 our page 09032, there's a weekly policy meeting, which 15 is obviously quite high level. There's then 16 a communication meeting, which is more informal. Then 17 there's a political meeting, Permanent Secretary's 18 meeting, and then much more informal interactions, which 19 is paragraph 29.5. Did you see that?</p> <p>20 A. Yes. I should clarify the policy meetings weren't one 21 policy meeting. There would be a policy meeting on each 22 of these topics that I've listed, but yes, other than 23 that, that's correct.</p> <p>24 Q. So whilst the BSkyB bid was going on, there was, is that 25 right, at least one meeting a week specifically devoted</p> <p style="text-align: center;">Page 63</p>
<p>1 like Mr Hunt, also other special advisers who would be 2 colleagues.</p> <p>3 MR JAY: But the Permanent Secretary was involved in that 4 process, was he?</p> <p>5 A. Yes, he filled in one of my forms, yes.</p> <p>6 Q. Thank you. So it would be fair to say that you occupy 7 a somewhat hybrid position vis-a-vis the Civil Service? 8 You're temporary civil servants, you have special 9 obligations under a code, you are responsible to your 10 minister, but you're in part a civil servant but in part 11 under the wing of your minister. Is that a fair way --</p> <p>12 A. That is a fair way, yes. Not just myself, obviously, 13 but all special advisers.</p> <p>14 Q. Indeed. In paragraph 26 you say: 15 "Although Mr Hunt never gave me precise instructions 16 as to what he perceived my role as special adviser to 17 be, this was, I believe, generally understood between 18 us." 19 Is it fair to say that he therefore gave you no 20 instructions as to what you should do, but you, because 21 you knew him so well, would work it out?</p> <p>22 A. No. This section is about whether he gave me 23 instructions sort of at the beginning of my tenure as 24 a special adviser as to what he wanted me to do. As 25 I explained earlier, in opposition myself and the other</p> <p style="text-align: center;">Page 62</p>	<p>1 to it?</p> <p>2 A. I don't know whether it worked out like that, because 3 that was a sort of a project, if you like, that came up 4 rather than one of Mr Hunt's priorities. He would have 5 meetings as and when he required them, but the bid would 6 certainly have been discussed at some of the 7 communications meetings or Permanent Secretary meetings, 8 yes, but I don't know whether it was as frequent as once 9 a week.</p> <p>10 Q. Okay. In terms of informal interactions, this is 11 paragraph 29.5 and paragraph 40. We can read those two 12 paragraphs together, I think. Paragraph 40 is at 13 page 09036, your page 11.</p> <p>14 A. Yes.</p> <p>15 Q. You're giving the impression here of frequent informal 16 regular contact, which I suppose would be typical for 17 that which obtains between special advisers and 18 ministers who get on well?</p> <p>19 A. Yes.</p> <p>20 Q. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And that would entail telephone meetings by mobile 23 phone, email contact, possibly text messages and 24 face-to-face contact?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 Q. In terms of the frequency of that contact, of course it 2 will wax and wane, depending on what's going on in the 3 office, but can you give us a flavour; how often, for 4 example, would you speak by telephone?</p> <p>5 A. Well, only if he and I weren't in the same building, 6 which did happen obviously quite regularly but I'd 7 probably speak to him two or three times a day. If he 8 was out and about or in Parliament and I was in the 9 department, maybe a bit more, more like three or four 10 times.</p> <p>11 LORD JUSTICE LEVESON: Could you help us a bit with the 12 geography? Where did he sit, where did you sit, where 13 was everybody?</p> <p>14 A. So the second floor of DCMS is the ministerial floor, so 15 each minister has their office and their private office 16 adjoining it, and the special adviser's office was in 17 one corner of that floor, sort of down the corridor from 18 Mr Hunt's --</p> <p>19 LORD JUSTICE LEVESON: You're simply down a corridor?</p> <p>20 A. Yes.</p> <p>21 LORD JUSTICE LEVESON: The private office, of course, 22 consists of his civil servants?</p> <p>23 A. His private secretaries, yes. So you had to go 24 essentially through their office to go into --</p> <p>25 LORD JUSTICE LEVESON: He will have had a number of them,</p> <p style="text-align: center;">Page 65</p>	<p>1 Q. But there are a number of -- I won't say key events, but 2 significant events in the history, maybe half a dozen 3 significant events, and we can deduce those by looking 4 at the relevant emails. Are we to infer that in 5 relation to each of those events, there must have been 6 a conversation, at least one, between you and Mr Hunt 7 about them? Is that a fair deduction?</p> <p>8 A. I would think only if they were leading up to him 9 announcing something. He would often have meetings with 10 me and the officials about what he wanted to say in 11 a statement and the officials would advise on whether 12 that was appropriate or not, but I don't think if there 13 was what I agree may appear to be quite a significant 14 moment, if it wasn't in the run-up to an announcement it 15 would have been unlikely. Not impossible but unlikely.</p> <p>16 Q. We may come back to that. Paragraph 30, 09033. You use 17 a number of metaphors to describe what you're doing, 18 you're eyes and ears, an early warning system and you're 19 a buffer. In relation to the buffer, when you refer to 20 outside organisations and maybe News Corp fits into that 21 category, how would you be buffering Mr Hunt, if that's 22 the right way of describing what's going on?</p> <p>23 A. Well, obviously a lot of outside organisations want to 24 meet with secretaries of state. They don't have the 25 time to meet with everybody that may want to meet with</p> <p style="text-align: center;">Page 67</p>
<p>1 will he?</p> <p>2 A. Yes, there were three or four most of the time, yes. 3 Each minister had private secretaries.</p> <p>4 MR JAY: But when the B SkyB bid is going on, we're probably 5 now in January 2011, could you give us a flavour, 6 Mr Smith, in your own words, how frequent is your 7 contact with Mr Hunt about the bid? Whether it be by 8 text message, mobile phone, face-to-face discussion or 9 whatever.</p> <p>10 A. Not as frequent as it -- as you might have thought, 11 I suppose. I mean there was the meetings which I've 12 listed there, but I would -- I wouldn't go and speak to 13 him about it on anything like a sort of daily basis or 14 even -- it would only be if he was preparing for a major 15 statement or if there were the odd occasion where an 16 issue that I judged to be of significant interest to 17 him, that I would go and speak to him about it, but 18 he -- the whole point of having the department, the 19 officials and myself, I suppose, was so that we could 20 kind of carry on with the work and not need to go 21 running to him every day.</p> <p>22 Q. So you presumably would have spoken to him in and around 23 the publication of the UILs on 3 March 2011, is that 24 a correct deduction?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 66</p>	<p>1 them, so I would often have contacts with them first to 2 see whether what they had to say was of interest or of 3 note, and then I would either feed that back to Mr Hunt 4 or, if I thought it was particularly interesting, 5 perhaps suggest he meet them as well, but it was to help 6 him so that he could focus on what he wanted to do, 7 rather than deal with the sort of --</p> <p>8 Q. So would you use your discretion then as to whether to 9 feed back information to Mr Hunt or not?</p> <p>10 A. Yes, yes. I would often have meetings where I thought 11 they were a waste of my time and therefore would almost 12 certainly be a waste of his time.</p> <p>13 Q. We're just dealing with general points now. You draw 14 attention to your performance appraisal, December 2011, 15 at paragraph 32. It's highly laudatory. Speaks for 16 itself. This will obviously be put online with the rest 17 of the evidence. I'm not going to read it out, if you 18 don't mind.</p> <p>19 I'm going to move forward to paragraph 35 --</p> <p>20 LORD JUSTICE LEVESON: What you have to appreciate from this 21 is that this is different people talking.</p> <p>22 A. Yes.</p> <p>23 LORD JUSTICE LEVESON: These paragraphs come out of 24 different responses. So, for example, the second 25 paragraph is clearly the Secretary of State, the "eyes</p> <p style="text-align: center;">Page 68</p>

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<p>1 and ears at meetings" comment. But then the top of the 2 next page, "he provides SOS [Secretary of State] with 3 really excellent support", that's clearly not the 4 Secretary of State because he would have said "me". 5 Equally the next one, "I don't think we could ask for 6 a SpAd who is more dedicated to his ministerial 7 department", again that can't be the Secretary of State 8 but it could be any one of the others. 9 A. Yes. 10 LORD JUSTICE LEVESON: We just need to understand how this 11 fits together. 12 MR JAY: Can we move now to Mr Hunt's thinking on the BSKyB 13 bid pre-21 December 2010. Was it your assessment that 14 Mr Hunt was close to News Corp and/or News 15 International? 16 A. No, not particularly. 17 Q. Why do you say that? 18 A. He didn't really have much of a relationship with either 19 of the Murdochs or the chief executive of News 20 International. He tended to deal, as I think the 21 Inquiry has seen, mainly with Mr Michel, but I wouldn't 22 have said he was particularly close to News Corporation, 23 no. He met with them in the same way that he met with 24 other media organisations, but actually nowhere near as 25 frequently, I do not think.</p> <p style="text-align: center;">Page 69</p>	<p>1 A. I can't remember doing so, no. I know that he made some 2 public comments to the Financial Times around that time, 3 so I would have obviously seen those and he may have 4 mentioned those to me, but I don't remember him 5 specifically talking about it. 6 Q. Did you believe him to be supportive of the bid or not? 7 A. No, I think his public comments were obviously 8 well-known. He said something along the lines of he 9 couldn't see a problem with it but he didn't want to 10 second-guess the regulators and not second-guessing the 11 regulators was something that he consistently stuck to 12 throughout the process. 13 Q. Let's have a look at some documents. In your four 14 bundles you've produced it's volume 3, page 09798. 15 I know you were here this morning. We're on to 16 7 October 2010 and Mr Michel had sent you two briefing 17 documents relating to the bid, one of them covered 18 competition issues and the other plurality issues. 19 A. Yes. 20 Q. And the briefing document itself has been redacted, as 21 I pointed out to Mr Michel, but it's in our bundle. We 22 can see your email to Mr Hunt was: 23 "Obviously strictly commercially confidential but 24 very interesting." 25 And his reply was:</p> <p style="text-align: center;">Page 71</p>
<p>1 Q. Were you aware of what was on his personal website about 2 being a cheerleader for News International in the 3 context, I think, of television? 4 A. I did see that, and actually I think that that was not 5 what Mr Hunt himself had said. If you look, that was 6 actually an extract from an interview that he gave to 7 Broadcast magazine and the Broadcast magazine journalist 8 had written -- I think it was "Like all good 9 Conservatives, he's a cheerleader", and then -- so the 10 entirety of the interview had been put up on Mr Hunt's 11 website, which was often the case, just to show what 12 he'd been up to, but cheerleader for BSKyB wasn't -- it 13 may well be what the journalist inferred -- I saw it was 14 reported as this is what Mr Hunt describes himself as. 15 Q. I don't think it was ever said he was a cheerleader for 16 the BSKyB bid specifically. The point was he was 17 a cheerleader for News Corp or more particularly News 18 International. Do you see that distinction? 19 A. Oh yes, I do, but I mean even that point I think was 20 what the journalist wrote and the whole article then 21 appears on Mr Hunt's website. It wasn't what Mr Hunt 22 wrote about himself, if you see what I mean. 23 Q. When the bid was announced, which was on or about 24 15 June 2010, and subsequently, did you have informal 25 discussions with Mr Hunt about his attitude to the bid?</p> <p style="text-align: center;">Page 70</p>	<p>1 "Very powerful actually." 2 Do you see that? 3 A. Yes. I think that challenges what he had said publicly 4 before, actually. 5 Q. There was another document which we saw this morning, 6 indeed I think I referred to it this afternoon as well, 7 where his comment was "persuasive". Do you recall that? 8 A. Yes, I recall that's what I said he had said. I don't 9 actually recall him saying as much to me, but I can 10 understand that it was probably something along those 11 lines, yes. 12 Q. I think actually it was a text message, but in any 13 event, it's just the one word "persuasive". 14 A. Yes. 15 Q. Which you were either transmitting because that's what 16 Mr Hunt has told you or it's directly from him, I can't 17 remember which. But aren't these pretty clear 18 indicators of what Mr Hunt's view was, at least on the 19 materials which were being provided as to the quality of 20 the bid and its desirability? 21 A. Well, I think it chimes with what he said about he 22 didn't think there was a particular problem but he 23 wouldn't second-guess the regulators. I don't think 24 that is any different meaning. 25 Q. Another document which may be more revealing then --</p> <p style="text-align: center;">Page 72</p>

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<p>1 LORD JUSTICE LEVESON: Just before we pass from these two 2 documents. Mr Smith, forgive me. What has this got to 3 do with you? I mean, I'm just intrigued to know why you 4 should be involved in this material. This was being 5 dealt with by another department. I can't believe you 6 didn't have more than enough to do. So what has this to 7 do with you?</p> <p>8 A. Well, it was a big issue in the media sector and I think 9 Mr Michel had offered to send something through to me 10 and I would always receive anything that anybody wanted 11 to send through to me.</p> <p>12 LORD JUSTICE LEVESON: So just for information?</p> <p>13 A. Yes.</p> <p>14 LORD JUSTICE LEVESON: As opposed to anything else?</p> <p>15 A. Yes. As you say, we weren't involved in the decision. 16 And I think they wanted to make sure everybody knew what 17 they thought.</p> <p>18 MR JAY: You were involved in the formulation of 19 a fortnightly update in November 2010, which was, 20 I think, intended to be sent to the Prime Minister but 21 you can help us on that. It's page 09802. It's dated 22 19 November 2010. Mr Hunt sends it to you. It's from 23 his personal account to your personal account but 24 nothing much may turn on that. This is a draft of 25 a memo which did go to the Prime Minister, according to</p> <p style="text-align: center;">Page 73</p>	<p>1 place in terms of media policy. Essentially what 2 James Murdoch wants to do is to repeat what his father 3 did with the move to Wapping and create the world's 4 first multi-platform media operator, available from 5 paper to web to TV to iPhone to iPad. Isn't this what 6 all media companies have to do ultimately? And if so, 7 we must be very careful that any attempt to block it is 8 done on genuine plurality grounds and not as a result of 9 lobbying by competitors.</p> <p>10 "The UK has the chance to lead the way ... but if we 11 block it our media sector will suffer for years. In the 12 end I am sure sensible controls can be put into any 13 merger to ensure there is plurality, but I think it 14 would be totally wrong to cave in to the Mark Thomson/ 15 Channel 4/Guardian line that this represents 16 a substantial change of control given that we all know 17 Sky is controlled by News Corp now anyway.</p> <p>18 "What next? Ofcom will issue their report saying 19 whether it needs to go to the Competition Commission by 20 31 December. It would be totally wrong for the 21 government to get involved in a competition issue which 22 has to be decided at arm's length. However I do think 23 you, I, Vince and the DPM should meet to discuss the 24 policy issues that are thrown up as a result."</p> <p>25 What did you gather from this memorandum?</p> <p style="text-align: center;">Page 75</p>
<p>1 Mr Hunt, subsequently. Didn't go quite in this form.</p> <p>2 A. Correct.</p> <p>3 Q. There are two drafts in the bundle and this is one of 4 the drafts. It says -- first of all, did you draft this 5 or did Mr Hunt draft this?</p> <p>6 A. I can't actually remember. We used to do those on 7 a fortnightly basis and sometimes I would draft the 8 first version and then Mr Hunt would redraft it and 9 other times he would just write it and send it to me for 10 fact checking. In this particular instance, I can't 11 remember, I'm afraid.</p> <p>12 Q. I think it's the former, he's drafting it for you and 13 you're being asked to look for typos and play around 14 with formatting.</p> <p>15 A. That's certainly what the email suggests but it's only 16 from looking at that that I would guess that. I can't 17 actually remember.</p> <p>18 Q. What it says is: 19 "James Murdoch is pretty furious at Vince's referral 20 to Ofcom." 21 That had occurred a few days beforehand, hadn't it?</p> <p>22 A. Yes, I believe so.</p> <p>23 Q. "He doesn't think he will get a fair hearing from Ofcom. 24 I am privately concerned about this because News Corp 25 are very litigious and we could end up in the wrong</p> <p style="text-align: center;">Page 74</p>	<p>1 A. I think again it's very similar to what he had said 2 previously, that he didn't see any particular problem 3 with it, but, as he mentions in the last paragraph, it 4 would be wrong for government to get involved in 5 a competition issue, which has to be decided at arm's 6 length, and it would have to be considered on plurality 7 grounds. I think this is a sort of obviously slightly 8 longer version of that because it was only a one-line 9 sentence to a journalist back in June, but I think that 10 chimes with what he said back then.</p> <p>11 Q. It's a bit more positive than that, isn't it? He's 12 saying that if the bid is blocked or rather if the UK 13 doesn't lead the way, it will block our media sector and 14 it will "suffer for years. In the end I am sure 15 sensible controls can be put into any merger to ensure 16 there is plurality." 17 So in other words he's effectively saying that there 18 aren't any real impediments in the way of this bid, 19 isn't that fair?</p> <p>20 A. Yes, possibly, but by this stage obviously the 21 regulators haven't looked at it, and so they are the 22 experts in deciding what plurality issue would -- 23 whether there would be a plurality issue or not.</p> <p>24 Q. Yes, that was their public duty to perform, but in terms 25 of someone expressing a political view, you could either</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 express a political view which was hostile to the bid or 2 one which was friendly to the bid. This is a view which 3 falls into the second category rather than the first, 4 doesn't it?</p> <p>5 A. Yes, I certainly think Mr Hunt never said that he was 6 hostile to the bid before.</p> <p>7 Q. No, but he always said he was in a favour of the bid 8 really, didn't he?</p> <p>9 A. I think he always said he didn't see any problems with 10 it but didn't want to second-judge the process.</p> <p>11 Q. He had to be loyal to the process because the process 12 had to be undertaken in any event but in terms of his 13 political judgment and preference he was favourable to 14 the bid, wasn't he?</p> <p>15 A. Well, yes, I suppose his personal view there was, yes.</p> <p>16 Q. But this personal view wasn't, as it were, a revelation. 17 It's true it's been communicated privately to the 18 Prime Minister, but it's a view which you knew anyway, 19 wasn't it?</p> <p>20 A. And had been publicly stated.</p> <p>21 Q. Yes, but I asked you about quarter of an hour ago was he 22 supportive of the bid and you gave me a non-committal 23 answer, but now we're reaching a point where I think you 24 might be agreeing with me that he was supportive of the 25 bid but recognising throughout that there was a process</p> <p style="text-align: center;">Page 77</p>	<p>1 merits of the particular bid, but whether the policies 2 around competition law and media plurality were sort of 3 fit for purpose, which was something that I know that 4 the DCMS was looking at more generally and is looking at 5 more generally as part of its work on the communication 6 side.</p> <p>7 Q. Were you aware of legal advice that was circulating 8 around the department on 19 November -- although I see 9 you weren't copied in to the relevant email -- which 10 made it clear that the decision resided wholly and 11 completely with the BIS Secretary of State and that 12 Mr Hunt could have no involvement in it?</p> <p>13 A. I don't remember seeing it at the time. Is that the 14 advice that said something about whether he can offer an 15 opinion or not?</p> <p>16 Q. It's an advice from the legal director of DCMS, which --</p> <p>17 A. I understood that it was a Secretary of State for BIS 18 decision. I don't know whether I definitely saw that 19 actual piece of advice.</p> <p>20 Q. The advice was -- the conclusion -- this is actually our 21 page 04256, this comes out of material we're going to be 22 looking at in more detail next week, possibly: 23 "Whilst there is nothing legally which formally 24 precludes the Secretary of State CMS from making 25 representations to the Secretary of State BIS to inform</p> <p style="text-align: center;">Page 79</p>
<p>1 which needed to be fulfilled. Can we agree about that?</p> <p>2 A. Well, I think what I said was that he had always said 3 there wasn't a problem with the bid and that was 4 certainly the case, and he's pointing out what he 5 thought some of the positives may have been in this 6 note, yes.</p> <p>7 Q. The other point which may well be significant, although 8 we think it came to nothing, is the last sentence, 9 a meeting at a high level in government "to discuss the 10 policy issues that are thrown up as a result." Do you 11 see that?</p> <p>12 A. Yes.</p> <p>13 Q. Mr Hunt's witness statement makes it clear that his 14 memorandum or the final version of it was sent to the 15 Prime Minister but do you happen to know whether there 16 was a meeting to discuss these policy issues or not?</p> <p>17 A. I don't know, but I don't believe there were. To the 18 best of my knowledge, there wasn't.</p> <p>19 Q. We've seen no evidence of such a meeting, but had there 20 been, you would have known about it, wouldn't you?</p> <p>21 A. Possibly, yes. I mean -- yes.</p> <p>22 Q. What did you understand the point of there being such 23 a meeting -- I'm sure it didn't take place -- to discuss 24 the policy issues that are thrown up as a result?</p> <p>25 A. I understood and understand that to be the -- not the</p> <p style="text-align: center;">Page 78</p>	<p>1 the latter's decision as to whether to refer the public 2 interest considerations in this merger to the 3 Competition Commission, it would be unwise to do so." 4 Were you aware of that at the time?</p> <p>5 A. I don't remember seeing that particular piece of advice, 6 no. I remember reading it, I think, as part of the 7 bundle for this Inquiry, but I do remember that I was 8 definitely aware that the decision was very much 9 Secretary of State for Business.</p> <p>10 Q. Was your Secretary of State keen, in your view, to speak 11 to Dr Cable and at least get his opinion across to him?</p> <p>12 A. To get Mr Hunt's opinion across to him?</p> <p>13 Q. Yes.</p> <p>14 A. I don't recall talking to him about that, no. He may 15 well have been, but not to my memory.</p> <p>16 Q. The other issue, on 21 December, when quite rapidly, 17 I think, Mr Hunt was acquiring responsibility now for 18 these regulatory functions, did you have a conversation 19 with Mr Stephens about Mr Hunt's position vis-a-vis the 20 BSKyB bid?</p> <p>21 A. I had a conversation -- Mr Stephens came to ask me 22 whether I knew of any other comments that Mr Hunt had 23 made about the -- any previous public comments he may 24 have made about the bid, and I think I referred him to 25 the comments he made to the Financial Times, which</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 I think Mr Stephens had already remembered, but he was 2 coming to check if I knew whether he'd said similar 3 things elsewhere. 4 Q. Was Mr Stephens' request of you limited to public 5 comments Mr Hunt might have made or did he broaden his 6 request of you to include anything that Mr Hunt might 7 have told you privately? 8 A. I believe it was public comments. 9 Q. Can we move forward then to 21 December. We're going to 10 look at the detail of the KRM 18 emails probably now 11 tomorrow, but I'm dealing with the generalities, as it 12 were, first. You explain what happened when Mr Hunt 13 assumed responsibility at paragraph 41, page 09038. Do 14 you see that? 15 A. Yes. 16 Q. You say a team of individuals was established. 17 Secretary of State, Permanent Secretary. The lead 18 official was Mr Zeff. There was a more junior official, 19 couple of legal advisers and a special adviser. So it's 20 quite a small team, is that fair? 21 A. Yes, there may well have been a couple of other more 22 junior policy officials but those were certainly the 23 main -- the key people, yes, it was quite small. 24 Q. And when this bid was acquired as coming within the 25 realm, as it were, of DCMS, did it become the most Page 81</p>	<p>1 was he present at all significant meetings? Can you 2 give us the flavour of that? 3 A. I can't remember whether he was present at all of the 4 meetings. Possibly the minutes maybe for the ones I had 5 with News Corp and Ofcom and the opponents might shed 6 some light on that but I'm afraid I can't remember, but 7 he would have been at quite a few of the internal 8 meetings when the issues were being discussed, but 9 again, very often when they were leading towards Mr Hunt 10 either making a decision or making an announcement, he 11 certainly wouldn't I don't think have been -- I don't 12 remember him being at every single meeting that was 13 held, no. 14 Q. Did you feel that he was allowing the lead policy 15 official to get on with it or do you feel that he was 16 taking a keen interest in what was going on or would you 17 characterise what he was doing differently from both of 18 my characterisations? 19 A. I don't really know what sort of contact he had with the 20 lead officials on it. I know it was mentioned at the 21 Permanent Secretary meetings that we discussed earlier 22 on a couple of occasions so he was certainly checking in 23 with both myself and the lead official but I wouldn't 24 have been aware of what he was discussing with the other 25 officials, I'm afraid. Page 83</p>
<p>1 important single task, as it were, or were there other 2 matters which were even more important? 3 A. I don't know that it necessarily became the most 4 important. At certain sort of key moments it would be 5 the most important agenda on the department -- item on 6 the department's agenda, but there were equally quite 7 long periods of time where there was a lot of sort of 8 detailed work going on, but it wasn't as high up -- 9 certainly Mr Hunt's agenda. He would remain focused on 10 his other priorities, but, you know, it certainly got 11 right up there, as you could rather obviously imagine. 12 Q. Was it understood -- this is probably obvious, really -- 13 that there were potential legal pitfalls because you had 14 quite litigious or potentially litigious people at 15 either end of the pincer, as it were, in the shape of 16 News Corp on the one hand and the coalition on the 17 other, and there were also rather large political 18 pitfalls which needed to be carefully negotiated, would 19 you agree with that summary? 20 A. Yes. 21 Q. That required input presumably from the Secretary of 22 State and the Permanent Secretary, did it? 23 A. Yes. 24 Q. Can you assist with how much input the Permanent 25 Secretary made in relation to this bid? In other words, Page 82</p>	<p>1 Q. Okay. Can we move forward to the meeting on 22 December 2 2010, page 09039, paragraph 43. It was really a joint 3 departmental meeting where the BIS officials were 4 handing over the bid to the DCMS officials; is that 5 correct? 6 A. They were there to brief Mr Hunt on where the sort of 7 bid had got to thus far, and I suppose there it was 8 a sort of a handover meeting, yes, because I don't 9 remember too many meetings after that where there were 10 any of these officials. 11 Q. You say in paragraph 43: 12 "They [that's the BIS officials] may also have 13 mentioned that Mr Hunt was to act in a quasi-judicial 14 capacity." 15 I think the note of the meeting is likely to say -- 16 I haven't in fact seen it yet -- that quasi-judicial was 17 mentioned specifically. Are you able to assist with 18 your recollection on that? 19 A. I think my paragraph 44, the minutes that I've seen, it 20 says the process and the various legal considerations 21 were discussed. So that sort of jogged my memory to 22 suggest that quasi official may well have been 23 discussed. I can't remember whether it definitively 24 was, but we certainly did discuss quasi-judicial on 25 other occasions if not that one. Page 84</p>

21 (Pages 81 to 84)

<p>1 Q. Taking it in stages, is this the first time you've heard 2 the use of that term?</p> <p>3 A. No, I would have heard it in the previous few months in 4 relation to the Secretary of State for Business.</p> <p>5 Q. What did you understand by the term?</p> <p>6 A. My understanding was that it meant that the decision had 7 to be made only after considering certain issues, in 8 this case namely media plurality; the sort of wider 9 political or other policy issues couldn't be taken into 10 account. And then sort of uniquely within government 11 that this was a personal decision for whoever the 12 Secretary of State was rather than a collective 13 government decision. So a normal policy decision, if 14 you like, even though it may well have been Mr Hunt 15 making it. Collective government would have meant that 16 they were all essentially making that same decision.</p> <p>17 Q. What about any process requirements built into the 18 concept? Were you aware of those?</p> <p>19 A. Of the quasi-judicial concepts?</p> <p>20 Q. Yes.</p> <p>21 A. Not -- well, the process that we were following was in 22 the Enterprise Act, but I didn't necessarily link 23 quasi-judicial to --</p> <p>24 LORD JUSTICE LEVESON: Let's just think about the word 25 judicial a bit, because there are lots of things I don't</p> <p style="text-align: center;">Page 85</p>	<p>1 MR JAY: So paragraph 43 relates specifically to Mr Hunt 2 having to act or it may also be mentioned that he had to 3 act in a quasi-judicial capacity. It said nothing about 4 what you could and couldn't do. Is that right?</p> <p>5 A. Yes. I mean, my understanding was always that it was 6 Mr Hunt that was acting in the quasi-judicial way, and 7 the department, which obviously included myself. Again, 8 it wasn't our, obviously, decision; it was Mr Hunt's 9 decision.</p> <p>10 Q. In terms of your role in relation to this somewhat 11 unusual function that Mr Hunt was discharging, what 12 value were you providing? What was your role?</p> <p>13 A. To be one of the points of contact for News Corporation. 14 To act as a buffer and as a channel of communications.</p> <p>15 Q. So buffer and channel of communication, they might be 16 slightly different, but you could be a conduit pipe, 17 material which was provided to you by a third party 18 could be passed on to the department, but you'd also be 19 able to, as buffer, protect Mr Hunt, I suppose, from 20 unwelcome or irrelevant intrusion, is that it?</p> <p>21 A. Yes. And if they -- if someone wanted to phone up and 22 have a grumble about a process or something, then 23 I would be the one that was on the receiving end of 24 that, rather than Mr Hunt.</p> <p>25 Q. Was any of this made explicit to you or is this just</p> <p style="text-align: center;">Page 87</p>
<p>1 know much about but I know a bit about that. I'm sure 2 you would agree with me that if a judge is trying 3 a case, then he can't speak to the parties outside the 4 case and go and chat to them in the evening as the case 5 is going on, one side as opposed to the other. You 6 don't have to be a lawyer to appreciate that wouldn't be 7 right. I mean, would you agree with that?</p> <p>8 A. I would. I think in this particular instance the 9 quasi-judicial process and the fact that you're dealing 10 with two interested parties, you obviously do need to 11 discuss lots of different things with those interested 12 parties. In fact, you need to, to get certain things to 13 happen.</p> <p>14 LORD JUSTICE LEVESON: But in a way that's open and 15 transparent to everybody. Don't you think? Or not?</p> <p>16 A. Um ...</p> <p>17 LORD JUSTICE LEVESON: It might be that I shouldn't be 18 questioning you about what you viscerally understand 19 about the phrase, but what you were told about the 20 phrase. What you were told it meant you could do or 21 what you were told it meant you couldn't do.</p> <p>22 A. I wasn't told I couldn't do anything in particular. It 23 was more about -- because it was Mr Hunt's decision, the 24 discussion was mainly about what he could or couldn't 25 do. I don't remember being told about myself.</p> <p style="text-align: center;">Page 86</p>	<p>1 something you carried out because you felt that that's 2 what special advisers did in this particular context?</p> <p>3 A. Well, I had previously carried out that role for other 4 work that the department had done and, as we sort of 5 discussed earlier, for Mr Hunt in opposition. It was 6 never, to my memory, sort of directly said to me, but it 7 was just sort of inferred by me and I think as we go 8 through, we'll see the department sort of assumed that 9 that would be the case. But there was no sort of direct 10 instruction, if you like, no.</p> <p>11 Q. Is this clear from your evidence: no one told you 12 explicitly what you could or you could not do, but you 13 extrapolated, as it were, from your previous experience 14 of working as a special adviser as to what it might be 15 appropriate for you to do in this particular case. Is 16 that fair?</p> <p>17 A. Yes, that would be a fair summary.</p> <p>18 Q. We will come back to that.</p> <p>19 Still on paragraph 43, Mr Hunt, you say, made it 20 clear he wanted to do things in a different way to -- 21 it's Dr Cable.</p> <p>22 "He said he wanted to make himself available for 23 meetings and wanted to be more open."</p> <p>24 Availability for meetings one understands, but what 25 do you mean by -- or what do you think he meant by</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 wanted to be more open?</p> <p>2 A. Well, I think he recognised that the Department for</p> <p>3 Business had not had any meetings or representations had</p> <p>4 been made, and obviously with the remarks that Dr Cable</p> <p>5 made that were caught on tape, there was a sort of</p> <p>6 feeling that the media plurality concerns weren't the</p> <p>7 main driver, so I think Mr Hunt was quite keen that that</p> <p>8 issue would be what drove him and he would be quite open</p> <p>9 to hearing representations on those issues.</p> <p>10 Q. So he would be receiving representations either by</p> <p>11 a face-to-face meeting or in writing, and he would be</p> <p>12 open to receive them. Is that what it amounts to?</p> <p>13 A. He and the department. I don't think he was necessarily</p> <p>14 being specific to himself. I think he just meant the</p> <p>15 process was going to be more that way.</p> <p>16 Q. Would it amount to this, that the representation that</p> <p>17 one party might send in would be shared with the other</p> <p>18 party out of ordinary fairness, or not?</p> <p>19 A. I don't know that anything like that -- some of the</p> <p>20 representations were later shared with Ofcom and the OFT</p> <p>21 to help them in their various considerations, but</p> <p>22 I don't remember that happening, no.</p> <p>23 Q. The last sentence of 43:</p> <p>24 "I also remember him saying that he wanted to be</p> <p>25 fair to everybody, including News Corp."</p> <p style="text-align: center;">Page 89</p>	<p>1 the coalition or anti-alliance, however you want to put</p> <p>2 it. Were they an interested party?</p> <p>3 A. Well, they were obviously interested in the deal, but</p> <p>4 I think the interested parties in terms of the merger</p> <p>5 were BSkyB and News Corporation. I think that was the</p> <p>6 technical -- under the Enterprise Act, but more broadly,</p> <p>7 people who were interested in it, yes.</p> <p>8 Q. Because we know that the Secretary of State did give the</p> <p>9 coalition a meeting on 24 March 2011. We've seen</p> <p>10 various documents which relate to that. Surely you</p> <p>11 regarded them as an interested party, didn't you?</p> <p>12 A. Yes, possibly, but I don't really remember having any</p> <p>13 contact from them.</p> <p>14 Q. Yes, well, that was the next question, because we see</p> <p>15 arguably a plethora but certainly a substantial quantity</p> <p>16 of contact between you and Mr Michel on behalf of</p> <p>17 News Corp, don't we, without judging it in terms of its</p> <p>18 quantity?</p> <p>19 A. Yes.</p> <p>20 Q. You can agree with that. If I were to ask you: where is</p> <p>21 evidence of equivalent contact, any equivalent contact</p> <p>22 with another interested party, namely the anti-bid</p> <p>23 coalition, is there any or not?</p> <p>24 A. There wouldn't be, because from my memory I don't</p> <p>25 remember them getting in touch with me, no.</p> <p style="text-align: center;">Page 91</p>
<p>1 Was there a sense then that the previous incumbent,</p> <p>2 as it were, Dr Cable, had not been fair to News Corp?</p> <p>3 A. I think that was the view, yes.</p> <p>4 Q. And fairness to News Corp would, I suppose, include</p> <p>5 being open to any representation that they might put</p> <p>6 forward. Would you agree?</p> <p>7 A. Yes. I think it more meant that he would consider the</p> <p>8 bid on the grounds of media plurality rather than</p> <p>9 anything else.</p> <p>10 Q. Well, to be technical, that isn't a matter of fairness,</p> <p>11 that's a matter of statutory obligation because that's</p> <p>12 what the statute requires, doesn't it, to consider</p> <p>13 what's laid out in the Enterprise Act and nothing more?</p> <p>14 A. Yes.</p> <p>15 Q. That's the truth?</p> <p>16 A. That is the truth, yes.</p> <p>17 Q. Can I ask you, please, about paragraph 45, which follows</p> <p>18 on really from what you've been telling us, that you</p> <p>19 assumed the role of managing the relationships with</p> <p>20 interested parties. I think that happened</p> <p>21 semi-automatically given that you were special adviser,</p> <p>22 you naturally fitted into that position vis-a-vis this</p> <p>23 admittedly rather unusual circumstance, would you agree?</p> <p>24 A. Yes.</p> <p>25 Q. And the interested parties, obviously News Corp and also</p> <p style="text-align: center;">Page 90</p>	<p>1 Q. Right. So your only contact was with Mr Michel because</p> <p>2 you had no contact, did you, with BSkyB the company, did</p> <p>3 you?</p> <p>4 A. Not on this deal, no.</p> <p>5 Q. And you didn't have contact with OFT and Ofcom because</p> <p>6 they were the experts who were advising the -- well, you</p> <p>7 did have one contact with Mr Richards, didn't you?</p> <p>8 A. Yes.</p> <p>9 Q. But save for that --</p> <p>10 A. And the meetings that Mr Hunt had with Ofcom and the</p> <p>11 OFT, I was present at those, but other than that, no.</p> <p>12 Q. So in terms of managing the relationship with interested</p> <p>13 parties, the only relationship we're talking about here</p> <p>14 is that with News Corp, aren't we?</p> <p>15 A. Yes.</p> <p>16 Q. Did that even intuitively raise alarm bells with you,</p> <p>17 Mr Smith, in terms of what arguably is a lack of balance</p> <p>18 here, in terms as well of whatever quasi-judicial might</p> <p>19 have meant to you?</p> <p>20 A. No, not really, because I think the work that I would</p> <p>21 have done with Mr Michel was often things that needed to</p> <p>22 be sorted out, like redactions to documents or process</p> <p>23 points, and obviously you don't necessarily need to talk</p> <p>24 to other interested parties about documents because they</p> <p>25 would just sort of send them in anyway. So no, they</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 didn't particularly ring any alarm bells.</p> <p>2 Q. You refer to a particular email that Mr Michel sent to</p> <p>3 James Murdoch on Christmas Eve 2010, we have looked at</p> <p>4 that several times now, that you were going to be the</p> <p>5 point of contact, but of course you didn't see that</p> <p>6 email at the time, did you, Mr Smith?</p> <p>7 A. Mr Michel's email?</p> <p>8 Q. Yes.</p> <p>9 A. No.</p> <p>10 Q. Did Mr Hunt explain to you that you were going to be the</p> <p>11 point of contact with Mr Michel or not?</p> <p>12 A. Not to my memory, no.</p> <p>13 Q. Did the Permanent Secretary explain that to you?</p> <p>14 A. No.</p> <p>15 Q. When it began to happen that there was contact between</p> <p>16 you and Mr Michel, is it your evidence, well, this was</p> <p>17 just natural evolution, as it were? There wasn't the</p> <p>18 instruction given by anybody within the department that</p> <p>19 it should happen, it just fell naturally into your</p> <p>20 existing role as special adviser? Is that it?</p> <p>21 A. Yes, exactly. And I think it would have not surprised</p> <p>22 anybody in the department, and I think as the process</p> <p>23 went on with discussions I had with members of the</p> <p>24 department or emails I sent them, they would have very</p> <p>25 clearly been aware and knew that I was having those</p> <p style="text-align: center;">Page 93</p>	<p>1 way I approached it, no.</p> <p>2 Q. In a sense it is rather odd because Mr Hunt is looking</p> <p>3 at a specific question or maybe two questions under the</p> <p>4 Enterprise Act which were really questions of fact where</p> <p>5 expert evidence might be relevant, namely plurality, and</p> <p>6 the competition issues go off elsewhere. That's not</p> <p>7 really a policy question or it's certainly not</p> <p>8 a political question.</p> <p>9 A. No.</p> <p>10 Q. It's really one for expert evidence. Did you see</p> <p>11 a tension there?</p> <p>12 A. Well, I was obviously never providing that expert</p> <p>13 evidence on the plurality issue. The work that I was</p> <p>14 doing was more about the process and facilitating it, so</p> <p>15 I don't think there was a difference in the way</p> <p>16 I approached the project. Some projects are about</p> <p>17 a policy decision. Others are about making a process</p> <p>18 happen.</p> <p>19 Q. As you said before, your role was to facilitate the</p> <p>20 process to manage the relationship but inevitably</p> <p>21 I suppose you attended the meetings, you read some of</p> <p>22 the material, you had your own view on the substantive</p> <p>23 issues, didn't you?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. Those views might or might not have been confined to the</p> <p style="text-align: center;">Page 95</p>
<p>1 discussions with Mr Michel, and nobody ever said, you</p> <p>2 know, where did you hear this or you shouldn't be doing</p> <p>3 that or -- it was -- I assumed that was the role I was</p> <p>4 going to be taking, and then as it developed, I don't</p> <p>5 think anybody was surprised that that was the role.</p> <p>6 Q. Fair enough. We'll come back to that.</p> <p>7 You say in paragraph 46 -- this again is in the</p> <p>8 context of the Enterprise Act:</p> <p>9 "... it was not explained to me how this might</p> <p>10 impact upon my contact with News Corp or any other</p> <p>11 interested party."</p> <p>12 So it would be fair to say then that you treated</p> <p>13 this particular function really in a similar way to any</p> <p>14 other policy decision, would you agree?</p> <p>15 A. Yes, I think that would be a fair summary, yes.</p> <p>16 Q. So whatever quasi-judicial might have meant in practice,</p> <p>17 it didn't really -- maybe I'm putting it slightly too</p> <p>18 high, but it didn't really bear on what you did or</p> <p>19 didn't do because you just proceeded as you would</p> <p>20 ordinarily have proceeded in any straightforward policy</p> <p>21 area, is that fair?</p> <p>22 A. Yes, because, as I explained, my understanding of</p> <p>23 quasi-judicial was that Mr Hunt had to decide on media</p> <p>24 plurality issues and that Mr Hunt himself had to decide</p> <p>25 on the bid. Beyond that, there was no difference to the</p> <p style="text-align: center;">Page 94</p>	<p>1 narrow question under the Enterprise Act, they may have</p> <p>2 been more widely drawn based on your own political</p> <p>3 experience and your own political judgment. Was that</p> <p>4 fair?</p> <p>5 A. Well, I think my views on the plurality issues were</p> <p>6 based on reading the expert evidence. I didn't think we</p> <p>7 ever really particularly considered much more than that.</p> <p>8 Q. Would you in essence describe your position on the</p> <p>9 merits of the bid as broadly speaking the same as</p> <p>10 Mr Hunt's position?</p> <p>11 A. Very broadly. I actually don't think I was -- I didn't,</p> <p>12 to be honest with you, particularly mind either way</p> <p>13 whether it happened or not. In a funny sort of way</p> <p>14 I couldn't quite see what everyone was getting so worked</p> <p>15 up about, but broadly speaking yes.</p> <p>16 Q. Broadly speaking?</p> <p>17 A. Yes, broadly.</p> <p>18 Q. This is the sort of issue which, for whatever reason,</p> <p>19 has the tendency to divide opinion, where people hold</p> <p>20 strong opinions on either side. You're aware of that.</p> <p>21 It may be absurd that opinion is so polarised on this,</p> <p>22 so you may not have been on one end of an extreme, but</p> <p>23 you certainly had a position, didn't you?</p> <p>24 A. Yes, I did.</p> <p>25 MR JAY: Sir, I don't know whether that's a convenient</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

1 moment?
2 LORD JUSTICE LEVESON: Certainly. Certainly, Mr Jay, it's
3 been a longish day. I hope you're not inconvenienced
4 too much, 9.30 tomorrow?
5 **A. No, not at all.**
6 LORD JUSTICE LEVESON: Thank you very much. 9.30 tomorrow.
7 Thank you.
8 (4.40 pm)
9 (The hearing adjourned until 9.30 am the following day)
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