



**Department
for Culture
Media & Sport**

DCMS Media Team
4th Floor
100 Parliament Street
London SW1A 2BQ

T: 0207 211 6000

www.gov.uk/dcms

Date: 16 March 2017

By Email

Jeffrey Palker
Executive Vice President, Deputy General Counsel
and Deputy Chief Compliance Officer
Twenty-First Century Fox, Inc.
1211 Avenue of the Americas
New York NY 10036
USA
[REDACTED]

James Conyers
Group General Counsel
Sky plc
Grant Way
Isleworth
TW7 5QD
[REDACTED]

Dear Mr Palker
Dear Mr Conyers

**TWENTY-FIRST CENTURY FOX, INC AND SKY PLC
EUROPEAN INTERVENTION NOTICE**

I refer to your respective letters of 8 March 2017, provided in response to our letter of 3 March 2017 which set out that the Secretary of State for Culture, Media and Sport (“the Secretary of State”) was minded-to issue a European Intervention Notice (“EIN”) under section 67 of the Enterprise Act 2002 (“the Act”) in relation to the the proposed acquisition by Twenty-First Century Fox, Inc (“21CF”) of the entire issued and to be issued share capital of Sky plc (“Sky”) that it does not already own (“the merger”).

The Secretary of State can now confirm that, for the reasons set out in the minded-to letter (subject to the points made below), she has issued the enclosed EIN in relation to the merger and has asked Ofcom and the Competition and Markets Authority (“CMA”) to report to her by midnight on Tuesday, 16 May on the following grounds:

(a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (“the plurality ground”);

...

(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (“the commitment to broadcasting standards ground”).

The Secretary of State notes that both of these grounds represent important safeguards for media plurality, the first in relation to plurality of ownership and the second in relation to reinforcing standards that support the plurality of views and content.

Your representations

We note the substance of your representations are contained in Jeffrey Palker’s letter on behalf of 21CF, with Herbert Smith Freehills indicating on behalf of Sky that Sky had nothing to add to those representations.

We note, in addition to the specific points in the 21CF letter, your indication that you welcome a thorough and thoughtful regulatory review of the merger.

You comment that if we had taken up your offer to make further representations (i.e. following your preliminary briefing two months ago) you could have responded to the written submissions referred to in the minded-to letter, including the Media Reform Coalition/Avaaz report. The considerations which informed the Secretary of State’s minded-to decision were those that were very clearly set out in the body of the minded-to letter under the ‘Issues of control’, ‘Media plurality’ and ‘Broadcasting standards’ headings. You contend that aspects of the Media Reform Coalition/Avaaz report were flawed. While the minded-to letter noted that this Report appeared to support the Secretary of State’s conclusions, to be clear she has not based her decision on specific factual points from this submission, and the referral to Ofcom will provide the opportunity for all such matters to be looked at comprehensively. More generally in relation to third party representations, we note that matters of substance were shared with you and that the Media Reform Coalition/Avaaz report was also available publicly days before your formal notification to the European Commission (at the same time it was provided to the Secretary of State).

With regard to the plurality ground, we note in particular your comments regarding our description of the Murdoch Family Trust (“MFT”) as having certain *shareholdings* in Sky. We acknowledge that the MFT’s interest in Sky is correctly described as an indirect shareholding or interest. Nevertheless, we consider that this interest, however described, supports the views set out by the Secretary of State in the minded-to letter. In particular, it remains the case that the merger may increase the MFT’s influence over Sky. The Secretary of State agrees that any plurality assessment must consider the actual extent of control exercised or exercisable by one body over another; this is one of the reasons the merger needs to be referred to enable a more thorough investigation of these matters.

In relation to the commitment to broadcasting standards ground, we note in particular your concerns that the Secretary of State appears to have relied on a purely numerical comparative

assessment of breaches by Sky and 21CF entities. As noted in the minded-to letter, the Guidance¹ suggests the undertaking of a qualitative assessment of past breaches, rather than *simply* focussing on the number of infringements. The assessment of past breaches as set out in the minded-to letter did not *simply* focus of the number of infringements, but also considered the extent to which breaches were resolved and the extent to which the breaches related to editorial related matters. This assessment is entirely consistent with the approach suggested in the Guidance.

We note your further representations made in relation to both the media plurality and commitment to broadcasting standards grounds. We consider that nothing in them leads the Secretary of State to dismiss her concerns as set out in the minded-to letter. As a result, the Secretary of State remains of the view that the matters raised in the minded-to letter warrant further investigation by Ofcom before a decision is taken on whether to refer the merger for a more thorough investigation by the CMA.

Other representations

Since the issue of the minded-to letter, the Secretary of State has received just over 700 written representations, the vast majority of which contained no new or material evidence but provided an opinion on intervention, and supported a decision to intervene.

A number of representations called for the Secretary of State to create a new public interest consideration which would require a fit and proper assessment of the parties to the merger to take place as part of the intervention process, and also to make clear that matters of corporate governance, accountability and conduct could be taken into account in assessing this merger, some supported by legal advice obtained by Avaaz on the issue². Other issues raised by representations included the need to consider the potential consequences for the broader public interest in relation to Sky's position as an internet service provider, media diversity and matters concerning competition and plurality. Other representations called for the merger to be halted until Part 2 of the Leveson Inquiry has taken place. The LSE Media Policy Project submitted a report on the case for referral of the bid to Ofcom.³ 38 degrees also submitted a petition calling for intervention on the merger and the addition of fitness and propriety as a ground for public interest intervention.⁴ The petition, as submitted on 8 March, included well over 300,000 signatories. We were also informed of a petition signed by over 70,000 Avaaz members calling for the merger to be prevented pending Part 2 of Leveson Inquiry which should commence

¹ Department for Trade and Industry, Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004. Available at:

<http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.bis.gov.uk/files/file14331.pdf>

² George Peretz QC, Advice Re: Anticipated acquisition by Twenty-First Century Fox, Inc ("21CF") of the entire issued and to be issued share capital of Sky plc ("Sky"): Proposed European Intervention Notice, 6 March 2017. Available at <https://inform.files.wordpress.com/2017/02/avaaz-sky-advice-6-3-17-1.pdf>

³ Barnett, S., Moore, M., & Tambini, D. (2017). Media plurality, the Fox-Sky bid, and the case for referral to Ofcom. Media Policy Brief 18. London: Media Policy Project, London School of Economics and Political Science Available at: <http://blogs.lse.ac.uk/mediapolicyproject/files/2013/09/LSE-MPP-Policy-Brief-18-Media-Plurality.pdf>

⁴ Available at: <https://speakout.38degrees.org.uk/campaigns/1705>

immediately, and that the merger be referred to Ofcom to assess the public interest and the question of fitness and propriety.⁵

We can confirm that nothing contained in these other representations has caused the Secretary of State to change her views or dismiss her concerns about the merger as set out in the minded-to letter. In reaching this decision the Secretary of State has continued to be mindful of the need to consider only relevant factors in her decision on intervention.

The Secretary of State recognises that many of the matters contained in these representations, and indeed in your own representations, may be worthy of closer investigation by Ofcom and the CMA in their respective roles under the Act, as well as by Ofcom in respect of its ongoing duty to assess the fitness and propriety of broadcast licensees. All relevant substantive representations we have received in relation to the merger will therefore be passed to Ofcom and the CMA accordingly.⁶

Conclusion

For the reasons set out in the minded-to letter, and subject to the points made above, the Secretary of State believes that it is or may be the case that the plurality ground and the commitment to broadcasting standards ground is relevant to a consideration of the merger and has issued the enclosed EIN accordingly. The Secretary of State welcomes your commitment to fully engage with Ofcom and the CMA as they prepare their reports in response to that Notice.

I am copying this letter to [REDACTED] at Allen & Overy and [REDACTED] at Herbert Smith Freehills.

Yours sincerely,

[REDACTED]
Director, Department for Culture, Media and Sport

Encl.

⁵ Available at https://secure.avaaz.org/campaign/en/uk_media_regulation_rb/

⁶ In accordance with section 241(3) of the Enterprise Act 2002, a public authority may disclose information to any other person for the purpose of facilitating the exercise by that person of any function he has under the Act, under enactments set out in Schedule 15 to the Act and under subordinate legislation specified by Order. The Broadcasting Act 1990 and the Broadcasting Act 1996 are specified in Schedule 15.