

DCMS Media Team
Department for Culture, Media and Sport
100 Parliament Street
London
SW1 2BQ

04 July 2018

Dear Madam/Sir:

Response to Open Consultation: Sky Fox Merger – Proposed Undertakings by 21st Century Fox, Inc (21CF) and the Walt Disney Company (Disney)

Thank you for this further opportunity to provide our views on this merger to aid the Secretary of State in his quasi-judicial decision-making role. We fully agree with the Secretary of State about the importance of Sky News and of protecting the public interest by ensuring a sufficient plurality of broadcast media voices.

On 6th February we wrote to the CMA panel indicating our belief that the only effective proposal to mitigate the risks of reducing media plurality was a complete prohibition of Fox's proposed purchase of all of Sky.¹ The Secretary of State has now issued proposed 21CF and Disney undertakings relating to the divestiture of Sky News which he believes will mitigate these risks. We urge him to strengthen them in a few areas before making a final decision on the merger.

Firstly, we believe you should make the completion of Fox's purchase of Sky conditional on the simultaneous divestiture of Sky News to Disney. There is no need for one to precede the other. The U.S. Department of Justice's settlement with Disney concerning its bid for 21CF now makes it more likely that Disney will succeed in its bid for that company, but there is still considerable uncertainty about who will end up owning Sky and Fox. The necessary regulatory clearances for the sale of Sky News to Disney can be sought, and both deals be prepared, but both transactions left to complete at the same time.

Secondly, we believe you should address the MFT's potential influence over Disney and, through it, Sky News by strengthening the proposed restrictions on Murdoch family members assuming roles as non-executive directors of Disney, and by adding a prohibition on the MFT building a bigger stake in Disney.

Disney's current undertaking offers less than the CMA's report to the Secretary of State. Disney commits to:

*"not employ any member of the Murdoch Family as **an officer or senior manager at Newco or at any direct or indirect parent company of Newco (including, without limitation, the Walt Disney Company)**, and shall not appoint any member of the Murdoch Family or any Associated Person to any position that would allow that person to exercise influence or control over Sky News"* (§ 3.2).

¹ See paragraphs 43 to 45 of the CMA's Notice of Possible Remedies, dated 23rd January 2018

The CMA's May 2018 report to the Secretary of State noted that the Murdoch Family Trust (MFT) will be Disney's second largest shareholder² and recorded that:

*"Disney told us that no member of the Murdoch family will be offered **a position on the board or a senior management position** of any Disney company if it was successful in completing its acquisition of Fox"* (§18.132).

To address the risk of the Murdochs increasing their influence over Sky News via enhancing their positions in Disney, paragraph 3.2 of Disney's undertakings should be amended to prohibit the appointment of any member of the MFT, or Associated Person, to any executive or non-executive role in Disney Group or any alternative parent company of Newco for the next 15 years. Disney's undertaking should also include a prohibition on the MFT acquiring additional shares, shareholder votes, or entering into block shareholder arrangements within Disney for the next 15 years.

Thirdly we believe the CMA should play an advisory role in the appointment of the Monitoring Trustee, and in any attempt to change the undertakings in future.

The role of the Monitoring Trustee under the 21CF undertaking is key to the whole remedy package and, in particular, to ensuring that appointments to the board of Newco are truly independent. The Monitoring Trustee's own degree of independence is critical.

The key post should not be determined by the Secretary of State acting alone. Disney is ultimately expected to take over 21CF, but the Murdochs' influence over politicians, and their long track record of breaking written undertakings in the UK, US, and Australia³ means it is essential for the Secretary of State to obtain and publish independent advice from the CMA before approving this vital appointment.

Paragraph 9 of the 21CF undertaking should therefore be amended to include an advisory role for the CMA in the process of appointment for the Monitoring Trustee.

The CMA should additionally be invited to provide advice to the Secretary of State if Fox or Disney cite exceptional circumstances in a bid to change the undertakings at any point during the 15 years.

Fourthly the Brand Licensing Agreement issued by Sky should be amended to ensure that the Licensor is not able to put pressure on Sky News as a result of any editorial decision, not just the specific ones listed in the current undertaking on this point (Clause 6(a)).

The draft brand licensing agreement says that the Licensor cannot invoke its power to require changes (as a result of acts or omissions by Sky News which harm the trade marks) on the basis of 'editorial decisions of the Licensee concerning any negative story about the Licensor or any company within the Sky Group' (emphasis added). The provision for other changes to be made and for review meetings to be held contained in paragraphs 14(h) and 16 of the agreement may undermine Sky News's independence from the Licensor. They should be deleted.

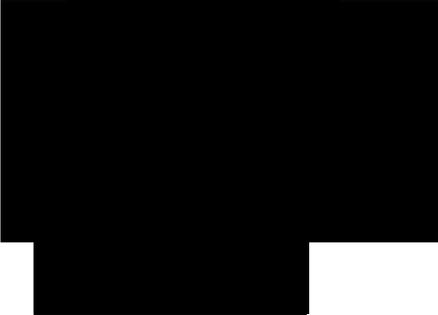
² See para 45(a) of the CMA's Notice of Possible Remedies, dated 23rd January 2018

³ See Avaaz's letter to the previous Secretary of State, 10th July, 2017.

We thank you, on behalf of Avaaz members around the country, for the opportunity to participate in these important deliberations and we hope that our views will encourage a robust approach to implementing our laws established to ensure that citizens receive a genuine range of views via the broadcast media.

Please do not hesitate to contact us should you require any further information or seek clarification on our position on this matter.

Yours sincerely,



Avaaz