DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT
NOTICE OF CONSULTATION ON THE PROPOSED ACQUISITION BY 21st CENTURY FOX, INC OF THE SHARES OF SKY PLC THAT IT DOES NOT ALREADY OWN

UNDERTAKINGS GIVEN BY 21st CENTURY FOX, INC AND THE WALT DISNEY COMPANY PURSUANT TO PARAGRAPH 9 OF SCHEDULE 2 OF THE ENTERPRISE ACT 2002 (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

Views are sought by 5pm on Wednesday 4 July 2018 as to whether the attached undertakings are sufficient to remedy the public interest concerns in relation to media plurality raised by the proposed merger.

Background

1. On 15 December 2016, 21st Century Fox, Inc, ("21CF") announced its intention to acquire the fully diluted share capital of Sky plc ("Sky") not already owned by 21CF and its affiliates, increasing its existing shareholding from approximately 39% ("the proposed merger"). Given the nature of the proposed merger, any competition concerns arising in relation to the merger fell to be considered by the European Commission and were approved by the Commission on 7 April 2017.[1]

2. On 16 March 2017, the then Secretary of State for Culture, Media and Sport, Karen Bradley, issued a European intervention notice under section 67(2) of the Enterprise Act 2002 ("Act") to the Competition and Markets Authority ("CMA") on the basis that the following public interest considerations were relevant to a consideration of the proposed merger:

- the need, in relation to every different audience in the United Kingdom (UK), for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (the "plurality ground"); and

- 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").

3. The intervention notice required Ofcom to investigate and report on the public interests and the CMA to report on jurisdictional matters. Having received reports from the CMA and Ofcom on 20 June 2017, representations from the parties and others, and after further clarification on specific points from Ofcom on 25 August and 4 September 2017, the then Secretary of State announced on 20 September 2017 her decision to refer the transaction to the CMA for a more detailed, Phase 2 investigation under Article 5(3) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("2003 Order") on both plurality and commitment to broadcasting standards grounds.

4. On 1 May 2018, the Secretary of State for Digital, Culture, Media and Sport, Matt Hancock, ("Secretary of State") received the report submitted by the CMA on the public interest considerations raised by the proposed merger. Having considered the CMA's report, on 5 June 2018, the Secretary of State wrote to 21CF and Sky issuing his public interest

[1] Case M.8354 *Fox/Sky*, Commission decision of 7 April 2017. Available at: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8354

decisions in relation to the proposed merger. Shortly thereafter, he made a public statement to Parliament and published the CMA's final report[2]. He decided that the merger may be expected to operate against the public interest on grounds of media plurality but that the merger may not be expected to operate against the public interest on grounds of the parties' commitment to broadcasting standards.

Consideration of Undertakings

5. The Secretary of State was then required to consider, in accordance with article 12(6) and (7) of the 2003 Order, what action would be reasonable and practicable to remedy, mitigate or prevent adverse public interest effects which may be expected to result from the proposed merger. Having considered the CMA's assessment of different remedy options, the Secretary of State found, in line with the CMA's conclusions, that the divestiture of Sky News to The Walt Disney Company ("Disney") or to another suitable purchaser could potentially remedy the adverse public interest effects in an effective and proportionate manner. However, he was clear that would only be the case if the divestiture remedy is designed in a way that ensures its long-term effectiveness.

6. While the Secretary of State considered that the divestiture undertakings submitted by 21CF to the CMA (and directly to him in largely the same terms) provided a good starting point, he also noted, that there were a number of issues with the undertakings, including issues identified by the CMA (in particular, those set out paragraphs 18.240, 18.248 and 18.250 of the CMA Report). In particular, the Secretary of State wanted further assurances that the final undertakings offered would ensure that Sky News:

- remains financially viable over the long-term;
- is able to continue operate as a major UK-based news provider; and
- is able to take its editorial decisions independently, free from any potential outside influence.

7. Following the successful conclusion of discussions between DCMS officials, 21CF and Disney, and the resolution of these issues, the Secretary of State has today published updated undertakings offered by 21CF to divest Sky News to Disney, alongside new undertakings offered by Disney.

8. The central elements of the remedy remain in line with the original 21CF proposals made to the CMA (set out in Annex O of the CMA report). In summary, 21CF has undertaken to divest Sky News, a distinct business entity within Sky, to Disney or to another suitable purchaser. The process for the divestment is conditional on 21CF completing the transaction to acquire Sky. Thereafter, the divestiture process has two separate steps.

9. First, the transfer of the Sky News business into a separate company - NewCo – with governance structures that ensure its independence from Sky and from the Murdoch Family Trust ("MFT"). 21CF has undertaken to achieve this 'as soon as reasonably practicable' following 21CF's acquisition of Sky.

[2] CMA, 21st Century Fox, Inc and Sky Plc: A report on the anticipated acquisition by 21st Century Fox, Inc of Sky Plc, 1 May 2018. Published by DCMS on 5 June 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713920/CMAFoxSky_report_nonconfidential.pdf

10. Second, the sale of shares in Newco to Disney for a nominal sum once the remaining regulatory approvals have been received and within 3 months of the completion of the Sky transaction.

11. Implementation of the undertakings is to be overseen by a monitoring trustee, whose appointment is approved by the Secretary of State. The monitoring trustee will also report to the Secretary of State.

12. Under the divestment undertakings first offered to the CMA by 21CF, the independent directors of Newco could not have had a close relationship with the Murdoch Family or Murdoch controlled companies in the previous 5 years. 21CF would provide financial support to Newco in the form of an advertising revenue guarantee and annual cash support on terms agreed between 21CF and Disney for 10 years with some protection from inflation. If the sale did not proceed, for example due to delay in Disney receiving the necessary regulatory clearance, Newco was to be restructured as a Trust Company to operate Sky News for the longer-term supported by funds from 21CF.

13. All of these aspects of the remedy have now been strengthened or replaced and in addition to the undertakings offered by 21CF, separate undertakings have now been offered by Disney.

14. In terms of ensuring the independence of Sky News from outside influence, the updated undertakings provide that Newco independent directors cannot have had a close relationship with the Murdoch Family or Murdoch controlled companies in the 10 years preceding the acceptance of the undertakings, and thereafter in accordance with the usual principles for appointing independent directors. In addition, Disney has separately provided undertakings that the wider Disney group will not employ any member of the Murdoch Family or any associated person to a position that would allow them to exercise influence or control over Sky News.

15. In order to ensure the long term viability of Sky News and to ensure it is able to continue operate as a major UK-based news provider, the period of funding by 21CF has been extended from 10 to 15 years, and Disney has undertaken to continue to operate Sky News and invest in high-quality news and UK-based journalism for at least that 15 year period. The level of funding has also been increased, such that it now covers all of Sky News' costs based on the current financial year, and Disney has committed to an additional amount to cover the sort of capital expenditure likely to be required periodically given the technological nature of the industry. In addition, the guaranteed financial support now comes with enhanced inflation protection as annual increases are linked to CPI and RPI, whichever is higher.

16. Overall, as a result of the undertakings, operating investment in Sky News will be at least the current level of funding adjusted by cost inflation for 15 years, and in any case ensure that the total funds available for Sky News, including the funding 21CF have undertaken to provide, is no less than £100m per year for the next 15 years.

17. Disney has also undertaken not to sell Sky News for 15 years without the approval of the Secretary of State; this commitment together with undertakings from 21CF, will ensure that any sale will be to suitable purchaser, who will assume the unexpired part of the obligations under Disney's undertakings and will benefit from the unexpired part of 21CF's funding commitments.

18. The undertakings now offered by 21CF also deal comprehensively with what would occur in the event that Disney is unable to complete the purchase of Sky News. In this scenario, a divestiture trustee will be appointed to oversee the sale of Sky News to an alternative suitable purchaser within a period of 3 months. These new provisions also satisfy the Secretary of State that Sky News can be swiftly divested to an alternative suitable purchaser – and not remain under the control of 21CF – even were problems to arise in relation to the proposed divestment to Disney.

19. The detailed arrangements are set out in the 21CF undertakings and Disney undertakings being published for consultation today. There are also a number of related documents which, in accordance with the undertakings, will need to be approved by the Secretary of State. Alongside the formal 21CF and Disney undertakings, DCMS is also publishing these supplementary documents:

- the Articles of Association of Newco, into which Sky News business will be transferred for sale to Disney;

- the Sky News Editorial Guidelines, to be initially approved by the Secretary of State, and any subsequent changes by Ofcom;

- the Divestment Agreement, in the form of a binding Share Purchase Agreement for the sale of Newco to Disney; and

- the Brand License Agreement, under which Newco will receive a worldwide, perpetual licence of the Sky News brand.

20. In the Secretary of State's view, the undertakings now offered by 21CF and Disney provide significant protections for the long-term future and editorial independence of Sky News. As a result, the Secretary of State considers the undertakings to be reasonable and practicable to remedy, mitigate or prevent the adverse plurality public interest effects that may expected to arise as a result of the proposed merger, in an effective and proportionate manner. In consequence of this, he now proposes to accept the 21CF and Disney undertakings. Before doing so, and in line with the Act, the Secretary of State is now commencing a consultation period within which representations may be made in relation to the proposed undertakings.

Responses

21. Views are sought on the 21CF and Disney undertakings and the supporting documents by **5pm** on **Wednesday 4 July 2018**. Responses should be sent to skyfoxmerger@culture.gov.uk or to DCMS Media Team, Department for Culture, Media and Sport, 100 Parliament Street, London, SW1 2BQ.

Related information

22. All documents published by the Department in relation to the proposed merger are available at:
https://www.gov.uk/government/collections/proposed-merger-between-twenty-first-century-fox-inc-and-sky-plc