



HOUSE OF COMMONS
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Project Manager
Fox/Sky Merger Inquiry
CMA
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24th October 2017

Dear Sir/Madam

Please find enclosed two documents:

- 1) An overview of our submission to the CMA on plurality and broadcasting standards issues raised by the proposed acquisition by 21st Century Fox of Sky plc
- 2) Our full detailed submission to the CMA on plurality and broadcasting standards issues raised by the proposed acquisition by 21st Century Fox of Sky plc

Yours sincerely

Rt Hon Ed Miliband MP
Rt Hon Sir Vince Cable MP

Rt Hon Lord Falconer of Thoroton
Rt Hon Kenneth Clarke MP

Overview of submission of Ed Miliband, Sir Vince Cable, Kenneth Clarke and Lord Falconer to CMA on plurality and broadcasting standards issues raised by proposed acquisition by 21st Century Fox of Sky plc

The attached document sets out our detailed case on why we believe the purchase of the remaining 61% of Sky by 21CF would operate against the public interest on grounds of plurality and broadcasting standards. References to page numbers in the text refer to this document unless otherwise stated.

Plurality: Summary of Case

1. The issues for the CMA raised by the reference in respect of plurality are whether the bid threatens the diversity of viewpoints that are available and consumed and whether it would give one media owner too much influence over public opinion and the political agenda.
2. Our case is that Sky would come under the control of the Murdoch Family Trust as a result of the takeover and the takeover would undermine plurality on both of the tests required to be considered by the CMA.
3. It is uncontested that the Murdoch Family Trust (MFT) would enjoy exactly the same ownership rights of Sky post-takeover as it currently enjoys in relation to its UK newspaper titles. 21CF would own 100% of Sky, with the MFT owning 39% of 21CF, just as currently News Corp owns 100% of News UK (and therefore the print titles of that company), with the MFT owning 39% of News Corp.
4. It is clear from the record of the Murdochs, the words of Rupert Murdoch, and Murdoch employees that Mr Murdoch and his family exert total control over their UK newspapers through the MFT's 39% stake in NewsCorp. Indeed, not even the Murdochs have, to this point, contested this. Rupert Murdoch told the Leveson inquiry "If you want to know what I think, read The Sun" (see p.65 of detailed submission)
5. It is logical, particularly in the absence of evidence to the contrary from 21CF, to believe just as the Murdochs control their UK newspaper titles with current ownership arrangements so they would have control of Sky with parallel ownership arrangements should this takeover take place.

6. This argument is bolstered by an analysis of the executive control that the Murdochs exercise over 21CF: Rupert Murdoch and Lachlan Murdoch are Executive Chairmen of 21CF and James Murdoch is CEO of 21CF. We would also point out that the second largest shareholder in 21CF, Prince Alwaleed bin Talal (owning 6.6%) has been an undying supporter of the Murdochs, including during phone-hacking and the Murdochs have the insurance of non-voting stock in the company which could be converted into voting stock. We contend that there is no reason to believe from their record or their incentives, which lie in commercial gain, that other shareholders at 21CF are a countervailing, independent force against the media power of the Murdochs (see p.14-16).

7. This situation contrasts sharply with the current situation at Sky where the Murdochs do not enjoy an executive position, and independent shareholders have shown a willingness to act as a constraint on the Murdochs' power. For example, it was pressure from independent shareholders that led to James Murdoch's removal as Chair of Sky in 2012 after phone-hacking and following his re-appointment as Chair in 2016, just this month 48.4% of independent shareholders refused to vote for his re-appointment. Furthermore, Rupert Murdoch himself has previously complained to a Parliamentary Committee about his lack of power over Sky (see p.91)

8. Total control of Sky by the Murdoch family would give them power over the UK media landscape which would be unprecedented for any commercial company: added to their current ownership of the largest circulation newspaper group in the UK, they would have, with the takeover, total control of the third most important supplier of TV news, the second most important 24 hour TV news channel, three major UK news websites, the control and supply of national and international radio news to "almost every commercial radio station in the UK" (to quote the words of Sky News Radio) as well as the second largest share of household broadband supply, to more than 6 million households.

9. Ofcom concluded in their public interest report of June of this year that the combined group would, at 10% of share of references, be "in line with ITN" (Ofcom Public Interest report, June 2017, paragraph 1.6) vying to be the media group with the second highest reach, as measured by reference share. As Ofcom went on to say: "The true reach and share of the merged parties may...be materially larger than survey data would suggest." (1.7). This is because some of the share attributed to Facebook, an intermediary, in fact

relates to content from Sky News and The Sun. According to Ofcom, among UK Facebook users the Sun is the second most popular news and current affairs page and Sky News is fourth.

10. We submit that even this approach underestimates the power of the Murdochs should this takeover be allowed. The cross-platform empire that would result would retain its current ability to influence the news agenda on other outlets, including the BBC, through its newspapers but in addition would now be able to amplify that through Sky News and Sky News Radio. Should the Murdochs desire to do so, we believe they would be able to drive a particular story through their newspapers, Sky News and Sky News Radio. This power in the hands of owners who have shown a desire to pursue a particular political agenda would be unprecedented and would put them in a different league to any other commercial media owner, including ITV. We believe it would be deeply threatening to plurality.

11. Some, including 21CF, would have the CMA believe that the increase in the Murdochs' reach as a result of this takeover is answered by digital media as a guarantor of plurality. This is profoundly wrong. Quite apart from the major influence of Murdoch media outlets online (According to Ofcom's public interest report, The Sun has the third highest reach of any news website and Sky News reaches 8.5 million people online and The Sun and Sky News reach 70% of online consumers---see p.19), there is a bigger point around the challenging economics of producing news in the online world.

The internet has destroyed the commercial value of producing news by making it very difficult to charge for content, and through the migration of advertising away from news sources to social media platforms like Facebook. That increases significantly the potential power of those who can finance news production making the stakes of the Murdochs controlling Sky even greater. A Sky News wholly controlled by the Murdochs, cross-subsidised from the rest of its group, aggressive in its approach, would have even greater power than a static analysis would suggest. (see p. 26-8)

12. Furthermore, the risk of this takeover lies not just in the quantitative metrics but qualitatively too. The Murdochs use their extensive media influence to protect and advance their commercial interests. For example we point in the document to the persistent use of their newspaper titles to attack the BBC, argue for the privatisation of Channel 4, and to attack internet rivals (see p. 53-4)

13. They also use their power for a clear political agenda. The examples of the use of this power for political ends are many: to cite one, all 175 News Corp newspapers across the world supported the Iraq war in 2003 (see p.67) This is merely one illustration of the way the Murdochs use their power to support a particular agenda. We see the same pattern on a daily basis in their newspaper titles in the UK, in Fox News in the United States, and most recently, Sky News Australia, after the acquisition of 100% ownership by News Corp just a few months ago (with exactly the same ownership structure as proposed for Sky in the UK by 21CF). (see p.71). Indeed, we would urge the CMA to examine the experience of Sky News Australia once the Murdochs took full control late last year.

14. In approaching the issue of plurality, we believe the right question for the CMA is to ask about the effect of the takeover in itself in the current media environment. We believe that the correct starting point in any historical analysis is the view taken at the time of the revelations around phone-hacking in 2011.

It was at that point that politicians of all parties concluded that the reason Murdoch-controlled companies had been able to act with impunity was because of the scale of their media power. As David Cameron said when he set up the Leveson inquiry in relation to News Corporation: "Never again should we let a media group get too powerful." (see p.10) These words are significant because they reflect the view across society and politics that Mr Murdoch had too much power back then in 2011, with just a 39% stake in Sky through News Corp, in addition to other holdings.

15. We believe that Mr Murdoch would have too much power over public opinion and the political agenda if this takeover were to proceed. Moreover, we believe that by removing the check of independent shareholders at Sky, this takeover would reduce the independence of Sky and therefore the diversity of voices in the media landscape. Further, we do not consider that post-takeover, the rules on impartiality are sufficient protection for the independence of Sky because of the ability to select stories and alter the tone of coverage, which a regulator cannot, and indeed should not directly control. As Ofcom itself acknowledged in their public interest report, "We do not consider that the impartiality rules of the Broadcasting Code are sufficient of themselves to ensure that the editorial stance of Sky News does not become

aligned with the other media outlets under the influence of the Murdoch Family Trust.” (para 9.12).

16. We believe our submission directly responds to and comprehensively answers the claims of Allen and Overy in their submission to the CMA around plurality, summarised on pages 20 and 21 of their submission at section 5.2 and 5.3. Taking each of these points in turn:

i) We believe the takeover would give the Murdochs control of Sky and the contention in 5.2 (i) that the minority control of 21CF by the MFT would prevent that is belied by the situation at their newspaper titles, whose ownership structure Sky would match identically post-takeover. Indeed, the substance of 5.2(i) logically rests on the absurd idea that the Murdochs do not control their newspapers, which should give any fair-minded person serious doubt about the credibility of those submitting this evidence.

ii) We believe, contrary to 5.2(ii) that the increase in shareholding would make a significant difference by giving the Murdochs control of Sky’s editorial output and it is instructive that this was the view of Ofcom in their 2017 public interest report. As we make clear above, it is clear that the Sky shareholders do challenge the Murdochs. That challenge would be removed.

iii) We do not believe, as per 5.2(iii), that the situation pre-takeover with minority Murdoch control can be taken as any reliable guide to the future. Once the Murdochs have complete control, editorial output is totally in their hands. We further contend that no weight at all can be placed on pre-takeover guarantees of editorial independence by the Murdochs, when such guarantees have been given and broken in the past—most recently when Mr Murdoch took over the Wall Street Journal in 2008, a guarantee broken on the day he took ownership, as our submission sets out (see p.74-5).

iv) Arguments at 5.2 (iv) about rules, audience expectations and culture preventing any change to Sky’s output are directly refuted by the regulator Ofcom in their public interest report: “We do not consider that the impartiality rules of the Broadcasting Code are sufficient of themselves to ensure that the editorial stance of Sky News does not become aligned with the other news outlets under the influence of the Murdoch family Trust(9.12)...We do not consider that audience expectations of themselves are likely to ensure editorial independence(9.14)...culture does not provide an adequate safeguard against editorial interference (9.16). “

v) As we set out above, we are wholly unconvinced that the rise of digital media will prevent “Sky’s news agenda...significantly impacting political discourse (5.2(v))”. According to Ofcom’s public interest report, Sky is the 3rd most used news source across all platforms, reaches 20% of the UK population through online even without counting the important impact of intermediaries like Facebook and is the 4th most popular news site in the UK for Facebook users. Moreover, as we have set out, original news production is under threat because of the economics of digital media and therefore concern about control by the Murdochs is increased not diminished.

17. Subsequent arguments made in the Allen and Overy submission at 5.3 seek to claim that plurality is currently “substantially in excess of sufficient” so there cannot in any case be an adverse public interest finding. We find these arguments wrong for the following reasons:

i) As we show in our submission, it is simply wrong to suggest the importance of traditional news providers is substantially diminished because of the rise of digital media. In any event, Murdochs newspapers and Sky News are very powerful news sources in the online world.

ii) The 2017 General Election was unusual in producing such an unexpected result but it is a totally unjustified leap to imply that “traditional media” is now unable “to exert influence effectively” as the Allen and Overy submission does. There is simply not the evidence to stand up such a claim or show that the influence exerted in the past no longer applies. Sky News and The Sun are very popular sites online, as we have already shown and significantly more voters continued to get their news from television and newspapers than social media even at the 2017 election, disproportionately so among certain groups such as those over 55 (see p.28-9). To those who suggest that 2017 shows newspapers are now ignored by their readers we would point out that 59% of readers of The Sun voted Conservative in 2017 according to Yougov compared to 47% in 2015 (p.25), an increase in the share of the Conservative vote not reflected nationally. Simply because an election result was not a bigger victory for the party supported by specific media interests, it does not demonstrate there was no influence on the result by those interests.

iii) Attempts to downplay the share of reference resulting from this takeover are unconvincing on a number of counts: the takeover would, as Ofcom set out, mean that the Murdochs were vying with ITV for the second greatest share of references and furthermore, this significantly understates their power

because of the measurement of intermediaries like Facebook (see above), the ability of Murdoch titles to influence the wider news agenda, and a dynamic analysis of the takeover and what it could mean for aggressive attempts to gain market share by Sky News in a world where news production is hard to afford for most outlets.

iv) To compare the acquisition of UTV by ITV to this transaction is absurd. ITV has a diversified set of shareholders and it is a company which has shown no sign of seeking to impose an editorial position or a political agenda on its media output.

v) As we argue above, the right starting point for a historical analysis is 2011, when politicians across parties said the Murdochs had too much power. This is the context in which we should view the 2003 Act. Parliament did not say that in 2003 plurality was sufficient and indeed today's plurality considerations arose from that Act. In any case, however, we would contend that the government was too relaxed about the Murdochs' power (as many politicians later acknowledged), with notable exceptions such as Lord Puttnam who persuaded Parliament, against the wishes of the government, to introduce the plurality framework (see p.10-12 for more detail on this argument).

18. In summary, we do not believe that the arguments advanced by Allen and Overly on behalf of their clients remotely stand up to scrutiny.

19. Our case is that the Murdochs would have complete control of Sky after this takeover, they would have very significantly enhanced power over the media landscape as a result, power that their record shows they will use for commercial and political ends to the detriment of the public interest in plurality. Both CMA theories of harm around plurality are correct in our view. We believe this takeover would give one owner too much power over the public policy and political agenda. We believe it would reduce the diversity of voices in our media landscape. We believe the prudent and correct course is for the CMA to recommend to the Secretary of State that it is not in the public interest for the takeover to proceed.

Broadcasting Standards: Summary of Case

1. The issues for the CMA raised by the reference in respect of broadcasting standards are: Whether taking account of the need for persons carrying on media enterprises to have a genuine commitment to the Broadcasting

standards identified in s319 of the communications Act 2003, the transaction may be expected to operate against the public interest.

2. Our case is that the effect of 21CF increasing ownership from 39% to 100% of the shares in Sky is that Sky will come under the full control of MFT for the reasons set out in paras 3-6 of the overview in respect of plurality above.

3. Further we argue that MFT does not have a genuine commitment to broadcasting standards, and in the light of the control the transaction will give it over Sky the transaction may be expected to operate against the public interest. Whereas currently the 61% ownership of Sky by interests other than 21CF ensures an adequate commitment to broadcasting standards by Sky, the removal of that 61% removes that protection.

4. In support of proposition 3, we rely on the following:

i) The corporate governance failures in Murdoch-controlled companies demonstrate that the MFT has so little commitment to corporate or ethical standards, as to mean that the CMA should conclude that them taking control of Sky endangers Sky's commitment to broadcasting standards. (For more detail see p.78-90)

ii) News Corp, controlled to the same extent by MFT as 21CF will be after the transaction, disregarded media standards wholesale in connection with the hacking and related scandals at the News of the World, and the Murdoch family, as Ofcom found in their 2012 Report, failed repeatedly in matters of corporate governance to investigate or put a stop to that misconduct. We would contend that the failures in respect of hacking have continued after 2011 in the failure of the Murdochs to have any kind of proper investigation of why hacking occurred (see p.84-5)

iii) 21CF has been since 2005 100% owner of Fox News (the position the Transaction will put them in, in respect of Sky). Since that time there has been at Fox News a pattern of gross violations of standards in the form of an epidemic of sexual and indeed racial harassment over many years, now the subject of an ongoing Federal investigation.

iv) This epidemic went right to the top of Fox news, including its Chief Executive and on-screen stars. We note also it continued unabated after 2012, when the Murdochs insist (and Allen and Overy claim on behalf of the Murdochs in their submission to the CMA) that corporate governance was

fundamentally changed in response to phone-hacking, meaning that for four years the 'new' corporate governance arrangements comprehensively failed.

v) Only in July 2016 was action taken against Roger Ailes when there was the threat of legal action and subsequently Bill O'Reilly was only fired after an advertisers' boycott occurred and a Federal investigation demanded answers.

vi) At the heart of the Murdoch's case to you, and previously to Ofcom is that the egregious and repeated failures to comply with corporate governance standards both in respect of broadcast and media standards and wider issues should be regarded as in the past, and that new standards introduced in 2012 should be regarded as drawing a line under the failures of compliance in the past. The facts do not bear that out. As we demonstrate in our detailed submission repeated statements that in the future they will comply turn out to be false.

vii) There could not be a clearer demonstration of the utter emptiness of the commitments expressed to proper compliance with reasonable governance standards than the events surrounding the extension of Bill O'Reilly's contract with Fox News for four years in February 2017 (when his salary was increased from \$18m to \$25m per annum). Prior to the extension, which Mr O'Reilly's lawyers contend was done at the instigation of Fox who were very keen not to lose their star presenter, Fox became aware of the fact that Mr O'Reilly had settled a sexual harassment suit brought by Ms Lis Wiehl, in addition to others they already knew about. The amount of the settlement was \$32m. Fox contend they did not know the amount. It appears at best they never asked. Despite knowing of this settlement which took place in January 2017 they nevertheless decided that the commercial benefit of keeping O'Reilly outweighed any commitment to corporate governance standards. On April 13, Mr. Zweifach, the company's general counsel, notified the Murdochs about a new document request from federal prosecutors investigating the network.

"We have had a critical development in the O'Reilly matter," Mr. Zweifach wrote in an email, which was obtained and published by The New York Times, whose authenticity has not been denied by Fox.

In the email, Mr. Zweifach explained to the Murdochs that the government request for all documents related to sexual harassment allegations against Mr. O'Reilly would "clearly call for the production of the Wiehl materials." Six days later, Mr O'Reilly was dismissed. What this revelation shows beyond

reasonable doubt is that contrary to the protestations of both James and Lachlan Murdoch, Mr O' Reilly lost his job, not because of distaste at his actions or a desire to uphold corporate governance standards but because Mr O'Reilly's actions were about to be revealed.

viii) The Murdochs must be held responsible for the culture they created and their attitude to wrongdoing when their commitment to standards is considered. We believe it is highly instructive that the two egregious failures of corporate governance in the UK and US occurred at their highest profile global brands. The scandals are linked in the following way: both Fox News and the News of the World were commercially successful organisations which put the drive for profit ahead of any commitment to ethical standards and decency. In both cases it was not concern about what had happened but financial threat which prompted action. The extent to which commercial success led MFT-controlled Fox News to tolerate the gross breaches of the law by its star talent and commercial controllers leads to the legitimate conclusion that MFT-controlled companies cannot be trusted to put proper compliance with regulatory standards above commercial motivation. This is bound to impact on its genuine commitment to broadcasting standards.

5. As the CMA examines the Murdochs "broader attitude... towards regulatory compliance and infringements that have taken place"(Issues statement, p.19), we would also point to the MFT's repeated willingness to retain or re-engage those responsible for massive failures of corporate governance, notably Rebekah Brooks who resigned over her failure to prevent hacking on an industrial scale happening while she was editor of the News of the World (p.82), and also, their re-hiring of people convicted of criminal offences, such as Nick Parker, convicted of handling a mobile phone stolen from an MP.

6. We would also point to the role of James Murdoch. He was the person identified in the 2012 Ofcom report as being personally guilty of repeated failures of governance (albeit he is acquitted of having actual knowledge of the hacking crimes) and we now know that he failed to root out wrongdoing at Fox News, notably when he knew about the actions of Bill O'Reilly in January 2017 and supported the renewing of his contract. He is now CEO of 21CF. No explanation is offered by 21CF of why he should now be trusted.

7. In support of our argument that the Murdochs cannot be relied upon to uphold broadcasting standards, we would also point out that Fox News is a byword for promoting tendentious and inaccurate journalism, advancing the

idea that President Obama wasn't born in America, that GCHQ spied on President Trump, and giving airtime to Islamophobia and homophobia.

8. Recently, Fox News broadcast a false (and subsequently retracted) story that a murdered Democratic staffer, Seth Rich, rather than the Russian government, was the source of thousands of leaked emails from inside the Democratic National Committee. Fox News have offered no explanation how the false story came to be broadcast. No disciplinary action has been taken and no apology to the grieving parents forthcoming.

9. The same failure to comply with basic standards infects their UK newspaper titles. Since the Murdochs have steadfastly refused to be part of a regulatory system as recommended by Lord Justice Leveson, there is no trusted regulator to adjudicate on these issues but we know even this inadequate system of regulation has found News UK titles in breach more than any other newspaper group (see p.6).

10. A serial disrespect for rules and regulatory compliance both in content and wider corporate governance clearly demonstrates the risks that Sky fully controlled by the Murdochs would not have a genuine commitment to broadcasting standards. What is more the Murdochs own stated ambitions for Sky provide deep cause for concern.

11. These ambitions were summarised by Rupert Murdoch himself in the evidence he gave to the Lords communications Committee in 2006. The Committee summarised the effect of that evidence as follows:

“Rupert Murdoch believed that Sky News would be more popular if it were more like the Fox News Channel. Then it would be “a proper alternative to the BBC”. One of the reasons that it is not a proper alternative to the BBC is that no broadcaster or journalist in the UK knows any different. Mr Murdoch stated that Sky News could become more like Fox without a change to the impartiality rules in the UK. For example Sky had not yet made the presentational progress that Fox News had. He stated that the only reason that Sky News was not more like Fox News was that “nobody at Sky listens to me”. (see p.91)

12. 21CF's argument in the Allen & Overy submission to you on Broadcasting standards using an old legal Opinion from Lord Pannick that the regulatory regime would prevent this happening is, as can be seen from the quote above, not shared by Rupert Murdoch himself (no doubt after receiving legal advice).

13. While, of course, the Code would have some impact, it cannot completely protect the independence and impartiality of news content broadcast by Sky, as Ofcom acknowledged in their Public Interest report in 2017: “We do not consider that the impartiality rules of the Broadcasting Code are sufficient of themselves to ensure that the editorial stance of Sky News does not become aligned with the other media outlets under the influence of the Murdoch Family Trust.” (para 9.12)

In its 2015 review of media ownership rules for the Secretary of State Ofcom also stated: “The Ofcom Broadcasting Code requires broadcasters to reflect alternative viewpoints on news items and on politically or industrially controversial or public policy issues in non-news programmes. However, the Code does not require broadcasters to cover particular issues. Therefore, broadcasters might be able to shape their editorial approach to news and current affairs by excluding stories and issues.”

14. The ambitions which the Murdochs have for Sky News are not secret and they do not believe that making Sky News more like Fox news will be prevented by the current regulatory regime, a regulatory regime incidentally, which they have repeatedly attacked, as we make clear in the detailed submission attached. (see p.71-73)

15. The recent takeover of Sky News Australia by the Murdochs at the end of 2016 gives a very recent example of what happens when they take full control. Evening broadcasts have been taken over by sensationalism and a number of right-wing talk show hosts, modelled on Fox News in the United States. (see p.71)

16. The concerns raised by the Secretary of State which led to her reference to you on the grounds of broadcasting standards and the case we make are hardly addressed by Allen & Overy in their submissions to you and were insufficiently addressed by Ofcom.

17. 21CF relies on the regulatory record of Sky News as judged by Ofcom. Our case is it is the transaction, giving undiluted control to MFT, which threatens Sky’s adherence to broadcasting standards. It is clear that the Murdochs control over Sky is currently constrained by independent shareholders. (See Paragraph 7 under plurality).

18. 21CF rely too on their regulatory record as judged by Ofcom. They give extensive detail of 21CF’s compliance arrangements in respect of Fox General

Entertainment Channels, National Geographic Entertainment Channels, and Star General Entertainment Channels. They give sparse details of the compliance arrangements in place for Fox News before Ofcom raised concerns in the course of their review for this Transaction.

19. This is because as Ofcom found there were no compliance arrangements. No plausible explanation is offered for this. It shows contempt for the UK broadcasting standards regime. It is obvious that there were no compliance arrangements for Ofcom because Fox News would never have had any intention of changing its broadcasting standards to satisfy Ofcom in the light of its success in the US. Allen & Overy contend on behalf of 21CF that they responded comprehensively and promptly when it was pointed out to them they didn't have any compliance arrangements. Apparently they introduced these arrangements some time after May 2017. But they ceased broadcasting Fox News to the UK in August 2017 without plausible explanation.

20. Our case on broadcasting standards is that the record of flagrant regulatory violations, wrongdoing, attempts to cover up that wrongdoing and deeply questionable journalistic standards on the part of Murdoch-controlled companies as well as their motivation demonstrates that it is more likely than not that Sky will no longer be genuinely committed to broadcasting standards if the transaction proceeds.

21. The right remedy is not to allow the merger to proceed. There are no plausible remedies short of that which can properly protect the public interest.

Submission of Ed Miliband, Sir Vince Cable, Kenneth Clarke and Lord Falconer to CMA on plurality and broadcasting standards issues raised by proposed acquisition by 21st Century Fox of Sky plc

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1. Introduction

21st Century Fox's ("21CF") bid for Sky plc ("Sky") raises significant public interest concerns which in our view mean the bid must be blocked by the Competition and Markets Authority ("CMA"). The acquisition would have the effect of reducing media plurality in the UK at a time when plurality in the production of news is insufficient and likely to continue to decline in future owing to the difficult economics of online news. It would also hand full control of a hitherto independent broadcaster, which has a good record of conforming to UK broadcasting standards, over to a company controlled by the Murdoch Family Trust ("MFT"), which lacks a genuine commitment to those standards. This is clear from the record of other Murdoch-run broadcasters, other Murdoch-run news outlets, and from their poor record of corporate governance in general. In this submission, we show how the root of both these problems is the Murdochs' ruthless pursuit of profit by any means.

The Murdochs are indifferent to concerns about the abuse of influence over public opinion and the democratic process. Instead, they actively seek to abuse what influence they have to acquire unfair advantages over their competitors in the markets in which they operate. They have an often-expressed contempt for regulation in general, which they experience as an irritating constraint on their drive to maximise profit; for regulators, to whom they have made promises they have gone on to break; and for broadcasting standards like impartiality and accuracy, which limit their ability to use TV news outlets they control as means of influencing the political process. The relentless commercial pressure they apply to the companies they control, combined with their indifference to ensuring appropriate regulatory and legal compliance, has resulted in a series of major scandals at their companies. Some are well-known, like phone hacking at News International and sexual and racial harassment at Fox News, but some are less well-known, like the use of anti-competitive practices at News America Marketing and NDS. The question is not simply whether the Murdochs knew about these scandals, but if they did not know, why they did not know and what that says about their approach to corporate governance.

The Murdochs operate in a consistent way, which is evident in their past behaviour. We would emphasise three elements. First, in the run-up to an acquisition, they have often been prepared to say and do whatever is necessary to secure it, in the knowledge that post-transaction, promises can be forgotten and undertakings circumvented. Their behaviour and their public statements in the run-up to this acquisition are not a reliable guide to how they will behave if the acquisition is cleared. Second, time after time, news outlets the Murdochs have acquired full control over have seen their journalistic standards deteriorate afterwards, becoming less accurate, more biased and less editorially independent. Sometimes this happens very quickly, sometimes it takes a few years, but it tends to happen in the end. The

CMA must believe the incredible to clear this bid: that this time will be different to all those other times.

Third, and most importantly, the Murdochs are committed to good governance and regulatory compliance in name only. Their record shows a consistent pattern of indifference to these important requirements for a UK broadcaster. The result has been a series of major scandals at their companies. Too often, their response to major failures in their companies has been driven not by a proactive commitment to high standards of compliance and corporate governance, or by a genuine desire to find out the full extent of wrongdoing and root out the bad practices, but by a desire to limit the commercial damage to their companies. This approach has meant that where evidence of wrongdoing has presented itself to company executives, their response has been to prioritise limiting public disclosure rather than to investigate fully and remove those responsible. The consistency of this pattern across different parts of the companies they control suggest the explanation is a culture and an approach set from the very top.

Our submission outlines our plurality concerns about this acquisition first, and then argues that the CMA cannot be confident the Murdochs would be genuinely committed to meeting UK broadcasting standards at Sky if they acquire full control of it. In the rest of this introduction, we outline the approach we believe the CMA should take to assessing the plurality implications of the acquisition.

The right approach to assessing plurality

The CMA has indicated that it intends to follow the Court of Appeal's ruling that a decision under the plurality ground requires an assessment of the sufficiency of media controllers: if a transaction causes a reduction in plurality, is the plurality remaining sufficient to ensure the objectives of the plurality regime are met? The CMA has asked for views on how it should go about assessing 'sufficiency'. We believe that the simplest and best approach for the CMA to take is to inquire into how far the goals of the plurality regime are being met at the moment, and how well they would be if this acquisition is approved.

Ofcom says that "*plurality in the media contributes to a well-functioning democratic society through: informed citizens who are able to access and consume a wide range of viewpoints across television, radio, online and print media from a variety of media organisations; and preventing too much influence over the political process being exercised by any one media owner.*"¹ The CMA has therefore said it will take as its starting point Ofcom's definition of plurality as, "*ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and preventing any one media owner, or*

¹ Ofcom (2017a), paragraph 3.32

voice, having too much influence over public opinion and the political agenda.”²

Ofcom has commented that “*the focus of the framework is on the first of these (informed citizens), as this goal helps mitigate the second (influence over the political process).*”³ We agree that having informed citizens helps mitigate the problem of ‘too much influence’, but it does not, on its own, preclude excessive influence over the political process accruing to one media owner. There are three ways the CMA can assess the extent of plurality in the UK:

- Collect evidence on how well different news sources inform their users.
- Examine which sources most influence public opinion and the political agenda.
- Assess any evidence which might suggest a particular media owner or voice has ‘too much influence’ over public opinion and the political agenda.

How well news sources inform users

Ofcom’s annual news consumption report examines consumers’ use of and attitudes towards different news sources, but does not assess the impact of consumption of different news sources on political knowledge.⁴ Indeed, Ofcom has never (to our knowledge) attempted to assess the impact of news sources on citizens’ knowledge of politics, world affairs, or anything else. Yet if the evidence shows that particular media owner’s news outlets do a poor job of informing their users, or even actively mislead them, then the expansion of that owner’s control over news production will be particularly harmful from a plurality perspective. We therefore recommend the CMA look particularly closely at the record of Murdoch-controlled news outlets for publishing inaccurate and misleading stories, including in other countries. The CMA should consider the complaints record of News UK.⁵ It should also look

² CMA (2017), paragraph 23

³ Ofcom (2015a), paragraph 2.3

⁴ Ofcom has also never assessed how levels of political knowledge in the UK compare to other countries., which would be the most sensible way of working out what the real determinants are of a media that is good at informing citizens. It could be, for instance, that the extent of ownership dispersal or concentration is not the sole, or perhaps even primary, cause of how well media inform citizens. The funding sources of media, the main platforms used to consume news, the extent of independence of publicly funded media from government influence, or the kind of ownership that prevails could be more important factors. For instance, some academic research suggests that the *kind* of media ownership that prevails in a country (e.g. private for-profit, private non-profit, or public), as well as the levels of public subsidy for news production, is more important. On this, see Aalberg and Curran (2012), especially chapter 3.

⁵ News UK is regulated by IPSO, the regulator set up by publishers including News UK who decided to boycott the regulatory system established by cross-party agreement in Parliament. IPSO fails to meet some of the criteria for an adequate regulator set down by Lord Justice Leveson in his Report’s recommendations, particularly regarding independence from the industry. (For an assessment of IPSO’s structure against the Leveson criteria, see <http://mediastandardstrust.org/wp-content/uploads/downloads/2013/11/MST-IPSO-Analysis-15-11-13.pdf>) Nevertheless, in 2015 News UK had the worst complaints record of any publisher regulated by IPSO. Five complaints were upheld against the *Times*, the worst record of any single title. The Guardian, “News UK tops list of complaints upheld in 2015 by Ipsos” 8 August 2016 <https://www.theguardian.com/media/greenslade/2016/aug/08/news-uk-tops-list-of-complaints-upheld-in-2015-by-ipsos>

at the output of Fox News and of Sky News Australia, in which News Corp recently increased its ownership share from 33% to 100%, and the output of News Corp's newspapers in Australia and the US.⁶ The record of editorial standards at each is clearly relevant to the likelihood of Sky complying with UK broadcasting standards, but we believe the aim of "*informed citizens*" means they are clearly relevant to the plurality assessment as well.

Assessing which news sources are most influential

Turning to the second way of assessing plurality, we urge the CMA to recognise that a media owner's influence over public opinion is not the same - in some cases not nearly the same - as their share of news consumption. Some news outlets have a much larger influence over opinion than their share of news consumption suggests, because they have an outsized capacity to 'set the agenda' for the rest of the media. Stories they publish would be regularly taken up by other outlets, meaning consumption of original news they produced would regularly appear as consumption of a different outlet. Clearly, one of the chief ways an outlet can have such outsized capacity is if it has a particularly large capacity to do original news production. We develop that argument in more detail in part 3, where we also argue that the internet is not causing an increase but a decrease in the plurality of original news production. As we show in part 2 and part 3, the story 21CF wants to tell about the internet and social media solving all plurality concerns is wrong and should be rejected.

Looking for evidence of 'too much influence'

Looking at the final way the CMA can assess the extent of plurality in the UK, we recognise that 'influence' is a hard thing to measure directly, yet we note and welcome the CMA's intention to try and do so by "*seeking evidence of actual political decisions that have already been influenced by the Murdoch family.*"⁷ While we believe the three theories of harm outlined by the CMA in its issues statement are correct, we believe the second it advances - "*the transaction increases the influence of the MFT and, by proxy, the Murdoch family on public opinion and on the political agenda*" - has a number of different dimensions.

We believe that the most sensible way to try and measure influence is to look for evidence of its effects. Many of these effects will be abuses of power that it is in the public interest to avoid. If the CMA follows this approach, we believe it will find a great deal of evidence that the Murdochs already have too much influence in the UK. We now describe some of the harmful effects of too much influence that the CMA could look for evidence of.

⁶ In the past, surveys have found that Fox News's audience is less well-informed than audiences of most other media sources; however, how far to blame Fox News is for this is less well-established. See, e.g. <http://publicmind.fdu.edu/2012/confirmed/>

⁷ CMA (2017), paragraph 47

First, the integrity of the democratic process could be undermined if too few people have too much influence over the political process, undermining democratic equality and unfairly biasing decisions towards the interests of a powerful few. This seems to be the main harm envisaged by Ofcom's plurality framework. However, it is obviously hard to measure. One proxy, however, is the extent of access to Government ministers enjoyed by media owners and their employees, since this will may indicate how much politicians feel the owner is too important to ignore. In part 4 of our submission, we provide evidence of a pattern of extraordinary access to Government by the Murdochs and their employees that has continued well after the publication of the Leveson Report, and extending right up to 2015.

Relatedly, if a widespread perception develops that power over the political process resides in the hands of a few powerful media owners, that could cause apathy and disaffection among citizens, who may feel that by comparison they do not matter in the political process. That could in turn causing them to question or reject the legitimacy of decisions made by democratic institutions. Public trust in different media outlets might be one useful proxy here.⁸ Another important piece of evidence for the CMA to consider is the Leveson Report. It concluded that by becoming too close to the press, politicians had contributed to,

*"a lessening of public confidence in the conduct of public affairs, by giving rise to legitimate perceptions and concerns that politicians and the press have traded power and influence in ways which are contrary to the public interest and out of public sight. These perceptions and concerns are inevitably particularly acute in relation to the conduct by politicians of public policy issues in relation to the press itself."*⁹

A second kind of harmful effect concerns manipulation of public opinion. A media owner with excessive influence over public opinion could abuse that influence to manipulate opinion about themselves, their political friends and enemies, and their rivals in the markets they operate in. For instance, the news outlets they control could give added prominence to stories which damage the public's trust in their rivals and enemies, and hide or play down stories which might damage the public's trust in themselves, or damage other commercial interests of the media owner.¹⁰

⁸ Albeit self-reported trust in face-to-face surveys may be subject to acceptability bias. Rob Kenny, an analyst whose report on media plurality 21CF has submitted in support of its bid for Sky, claims that a clear decline in trust in "virtually all the News Corp and Sky outlets" since 2013 is evidence of their diminished influence over public opinion in the UK, and therefore a reason to allow the Murdochs to acquire Sky - see p. 51 of Kenny (2017). This reasoning seems perverse: the decline is plausibly attributable to negative public perceptions of the Murdochs arising from the phone hacking scandal and the criminal trials arising from it. If that is correct, it is hardly a reason to allow the Murdochs to increase their influence over Sky.

⁹ The Leveson Report, Part I, Chapter 8, Section 3.8 <http://leveson.robertsharp.co.uk/l/chapter8/#para3-8>

¹⁰ To assess the degree to which Murdoch-controlled news outlets do this, the CMA could assess their coverage of roughly similar stories. For instance, Fox News's coverage of the sexual and racial harassment scandal at Fox News, versus its coverage of similar allegations at other companies, like the Weinstein Company. The same goes for coverage of these stories in *Times* and the *Sun*. The CMA could also assess whether Murdoch-controlled news outlets cover

A third harmful effect would concern the corruption of civic institutions. If a company has too much influence over public opinion and the political process, this could make not just politicians, but officials at institutions normally responsible for ensuring enforcement of regulations and laws afraid of ‘taking on’ the company in question by doing their jobs properly. In this way, excessive influence could corrupt the workings of key civic institutions tasked with investigating wrongdoing, like the police and regulators. We submit that this was the case with News International in relation to phone hacking and other wrongdoing. Senior police, the Information Commissioner’s Office and the Press Complaints Commission all failed to properly investigate and punish evidence of wrongdoing in the press when it came to their attention.

This harmful effect will be particularly likely to occur if the company in question has a record of using its influence to ‘retaliate’ against those who harm its interests, e.g. by creating news stories intended to damage them. Employees of the company explicitly threatening this kind of retaliation would also be good evidence of this harmful effect. The CMA could collect evidence from politicians and regulators on whether they have ever received threats of retaliation of this kind from News Corp or 21CF employees. There is already evidence in the public domain that employees of News Corp made such threats during the company’s 2010-11 bid for Sky.¹¹

A fourth kind of harm would be if a media owner with too much influence over the political process causes public policy decisions to be taken in ways that unfairly advantaged their commercial interests. In that case, fair competition in the markets the owner operated in would be undermined. This is a form of ‘anti-competitive practice’ unique to media markets - one of the reasons there are in many countries much greater concerns about concentration in media markets than in other kinds of markets. This is an especially important kind of harm for the CMA to consider because we contend it is precisely this sort of unfair advantage over their commercial rivals that the Murdochs actively seek to acquire political influence for. We provide evidence for that claim in part 4 of our submission. Evidence of the Murdochs’

damaging stories about Murdoch-run companies less than other media. Two instructive examples would be (a) the phone hacking scandal, and (b) the verdict of the Hillsborough inquest - a story particularly embarrassing for the *Sun* because of its inaccurate coverage of the event at the time. See The Guardian, “Sun and Times front pages criticised for ignoring Hillsborough verdict” 27 April 2016 <https://www.theguardian.com/football/2016/apr/27/sun-times-front-pages-ignore-hillsborough-verdict> It has also been alleged that Rupert Murdoch sought the resignation of James Harding as editor of the *Times* because Murdoch felt he gave too much coverage to the phone hacking scandal at News International. See e.g. The Telegraph, “James Harding steps down as editor of The Times” 12 December 2012 <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/media/9740384/James-Harding-steps-down-as-editor-of-The-Times.html> “It is understood that Mr Murdoch was unhappy at the way that the newspaper had covered the News of the World phone hacking scandal, particularly in recent months.”

¹¹ See the testimony of Vince Cable and Norman Lamb to the Leveson Inquiry, in which both allege they were threatened with negative coverage in News Corp newspapers if Cable did not treat the company’s bid for Sky favourably in his capacity as Secretary of State for Business. The Leveson Inquiry (2012d), p. 65. The Leveson Inquiry (2012e), paragraphs 5-6.

On stepping down as CEO of Ofcom, Ed Richards gave an interview in which he said Ofcom had been subject to “intense pressure from the participants in that bid, particularly from the acquirer.” The Independent, “Government favoured Rupert Murdoch’s media empire, says outgoing Ofcom chief” 29 December 2014 <http://www.independent.co.uk/news/media/press/government-favoured-rupert-murdochs-media-empire-says-outgoing-ofcom-chief-9947518.html>

extraordinary access to Government ministers is also relevant here. We now turn to consider 21CF's argument that plurality must already be more than sufficient.

Was there sufficient plurality in 2003?

The current plurality regime was established by the Communications Act 2003. In its submission to the CMA, 21CF argues that *"it is implausible that Parliament considered media plurality to be insufficient when passing legislation that relaxed controls on media ownership and, particularly, cross-media ownership. The situation in 2003 could therefore serve as an example of when plurality was considered to be clearly sufficient."*¹² 21CF then argues that plurality has increased since 2003, giving room for a reduction in plurality like the one caused by this acquisition without necessarily leading to a situation of insufficient plurality.

We reject the idea 2003 can serve as a starting point. First, there have been more recent statements, to which the CMA must have regard, that clearly imply Rupert Murdoch has had too much influence over the political process, therefore implying a situation of insufficient plurality. In 2011, when setting up the Leveson Inquiry, David Cameron said in relation to News Corporation, "never again should we let a media group get too powerful."¹³ In 2012 he also said, *"I think on all sides of the House there is a bit of a need to say, hand on heart, that we all did too much cosyng up to Rupert Murdoch"*.¹⁴ Also in 2012, the Leveson Report concluded that over the previous 30-35 years - i.e. a period covering 2003 - politicians had got "too close" to the press. As he put it:

*"the evidence clearly demonstrates that the political parties of UK national government and of UK official opposition have had or developed too close a relationship with the press. This assessment relates to the period of the last thirty to thirty-five years but is likely, as has been suggested, to have been much longer than that. Although this relationship has fluctuated over time, the evidence suggests there has been a perceptible increase in the proximity of the relationship over this period. I do not believe this has been in the public interest."*¹⁵

¹² 21st Century Fox (2017), paragraph 3.14

¹³ The Guardian, "David Cameron: no media group should get too powerful" 20 July 2011 <https://www.theguardian.com/media/2011/jul/20/david-cameron-no-media-group-too-powerful>

¹⁴ Hansard Column 950, 25 April 2012 <https://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120425/debtext/120425-0001.htm>

¹⁵ The Leveson Report, Part I, Chapter 8, Section 3.5 <http://leveson.robertsharp.co.uk/l/chapter8/#para3-5>

Although Leveson offered comment on all of the major national newspaper owners in the UK, it was only of Rupert Murdoch that he said anything like the following: “*All the politicians who gave evidence before the Inquiry said that Mr Murdoch exercised immense power and that this was almost palpable in their relations with him. Mr Blair spoke in terms of his acute awareness of the power that was associated with him.*”¹⁶ In other words, it is clear that if anyone has had ‘too much influence’ over the political process in the UK, it is widely believed to have been Rupert Murdoch, both by politicians themselves and by the judge tasked with examining politicians’ relationship with the media.

The Leveson Inquiry was set up by the Coalition Government in response to the phone hacking scandal in 2011. We now also know that 2003 was around the time that phone hacking and other wrongdoing was at its height at News Corp’s UK newspaper subsidiary, News International. We contend that one of the enabling conditions for the industrial-scale criminality that took place at that company was the belief on its employees’ part that they would not be investigated or punished for their actions. One cause of that belief was the immense influence that they had over public life, as part of the biggest national newspaper company and one whose titles were widely believed to influence the outcome of General Elections. As the Leveson Report documents, the Press Complaints Commission, the Information Commissioner’s Office, and senior police officers all failed to fully investigate wrongdoing by the press when faced with evidence of it. Moreover, News International was strikingly brazen in its obstruction of the first police efforts to investigate it, as again the Report documents. 2003 has to be seen in the context of what was later realised in 2011 by all political parties, as well as of what was said to the Leveson Inquiry by all the politicians who gave evidence about Rupert Murdoch, and of what Lord Justice Leveson concluded about the period leading up to his Inquiry.

Looking at the Communications Act 2003 itself, it is of course the Act that introduced the media public interest considerations which the Secretary of State invoked in her European Intervention Notice earlier this year, including the plurality ground. The amendments which introduced that and the other media public interest intervention grounds were the result of “*determined campaigning against the Government by Lord Puttnam*”, as Lord Justice Leveson put it in the section of his report narrating the passage of the Act.¹⁷ The Government of the time wanted to go further in the direction of deregulation. This was widely speculated at the time to have been due to the influence of Rupert Murdoch, whom Lance Price, a special adviser to Tony Blair and director of communications for the Labour party, called the “24th member of the cabinet.”¹⁸ Similarly, Lord Puttnam’s amendment was seen at the time

¹⁶ The Leveson Report, Part I, Chapter 8, Section 2.7 <http://leveson.robertsharp.co.uk//chapter8/#para2-7> For Leveson’s full assessment of Rupert Murdoch, see Appendix 2 to this submission.

¹⁷ The Leveson Report, Part I, Chapter 5, Section 5.3 <http://leveson.robertsharp.co.uk//chapter5/#para5-3>

¹⁸ The Leveson Report notes that this perception was widespread in 2003. See Part I, Chapter 5, Section 5.7 <http://leveson.robertsharp.co.uk//chapter5/#para5-7>

Lance Price, “Rupert Murdoch is effectively a member of Blair’s cabinet” The Guardian 1 July 2006 <https://www.theguardian.com/commentisfree/2006/jul/01/comment.rupertmurdoch> In context: “It’s true that Rupert Murdoch

as having been moved specifically so that there would be a statutory mechanism to limit Rupert Murdoch's ability to expand his British media holdings further.¹⁹ In other words, Rupert Murdoch was, at the time of the 2003 Act's passage, identified as the primary threat to the sufficiency of media plurality in the UK. It is therefore reasonable to say that the acquisition the CMA is assessing is precisely the kind of transaction which the plurality ground was introduced into law to enable regulators to prevent in the future. Situations arising in future where 'sufficient plurality' of media ownership was endangered were therefore clearly considered by Parliament at the time of the 2003 Act.

A final point on this issue for the CMA to consider is this: since 2003, Parliament has never undertaken any meaningful debate over, or revision of, the plurality regime. The House of Lords Communications Committee has looked at the issue of media plurality twice, in inquiries in 2008 and 2014.²⁰ However, the Commons Select Committee for Culture, Media and Sport has never made plurality the subject of an inquiry.²¹ Although the Leveson Report made some recommendations to improve media ownership rules and the plurality regime, these were never taken forward. Even the review of media plurality in the UK that the Government said it was committed to having in the aftermath of the Report's publication was subsequently dropped. Parliament has never returned to address the question of what constitutes 'sufficient plurality' of media ownership, despite repeated reminders from Ofcom that the judgement of how much plurality is 'sufficient' is ultimately a political one that only Parliament has the authority to make.²² One reading of these events is that politicians have consistently been afraid to develop plurality policy, for fear of incurring the hostility of media owners. This suggests an abiding situation of insufficient plurality. Indeed, we present evidence in part 4 suggesting plurality is currently insufficient.

doesn't leave a paper trail that could ever prove his influence over policy, but the trail of politicians beating their way to him and his papers tells a different story. There is no small irony in the fact that Tony Blair flew halfway round the world to address Mr Murdoch and his News International executives in the first year of his leadership of the Labour party and that he's doing so again next month in what may prove to be his last. I have never met Mr Murdoch, but at times when I worked at Downing Street he seemed like the 24th member of the cabinet. His voice was rarely heard (but, then, the same could have been said of many of the other 23) but his presence was always felt. No big decision could ever be made inside No 10 without taking account of the likely reaction of three men - Gordon Brown, John Prescott and Rupert Murdoch. On all the really big decisions, anybody else could safely be ignored."

¹⁹ The Guardian, "Media bill under threat as Lords warm to 'Murdoch' amendment" 20 June 2003 <https://www.theguardian.com/media/2003/jun/20/citynews.rupertmurdoch>

²⁰ *The Ownership of the News and Media Plurality*.

²¹ However, the CMSC has held two inquiries into phone hacking and press standards: *Press standards, privacy, and libel* in 2009-10, and *News International and Phone Hacking* in 2011-12.

²² In Ofcom's most recent work on plurality outside of this acquisition, the November 2015 plurality measurement framework and the review of media ownership rules for the Secretary of State published in the same month, it reiterated its view that as far as the market review of plurality goes, the ball remains in Parliament's court. In the introduction to the measurement framework, it reminded readers that it had previously pointed out the need "for Parliament to consider whether it can provide any further guidance on how sufficiency can be defined, and in doing so the extent to which the current level of plurality delivers against this." Ofcom also noted that "The Government consultation report indicated that the purpose of the measurement framework was to allow the first ever baseline assessment of media plurality in the UK." In the media ownership rules review, it said that "It is now for Government...to consider what degree of plurality is sufficient." See Ofcom (2015a), paragraph 2.21 and Ofcom (2015b), paragraph 1.7

2. This bid will increase the control of 21st Century Fox and the Murdoch Family Trust (MFT) over Sky, reducing media plurality in the UK

In this part of our submission, we show the increase in influence over public opinion and the political process that this transaction would hand to the Murdochs. First, we describe the increase in the MFT's control over Sky that would occur. Second, we summarise Ofcom's conclusions on the effect of the acquisition on news consumption, before addressing 21CF's analysis about the rise of social media as a source of news and the case of the 2017 general election. We then look at dynamic effects of the acquisition and differences between audience groups.

The MFT's increase in control over Sky

At the moment, the Murdoch Family Trust ("MFT") has a roughly 39% share of both News Corp and 21st Century Fox Class B voting stock. This gives the MFT material influence over both companies; under section 26 of the Enterprise Act 2002, this means they are under the common control of the MFT. In turn, 21CF owns 37.19% of Sky's stock. In Ofcom's 2010 decision, it found that News Corp's 39.1% stake in Sky represented "*material influence over Sky*" but not "*full control*".²³ (This is the position 21CF are now in, in respect to Sky.) In both cases, the presence of other shareholders and independent directors on Sky's board mitigated News Corp's influence. Ofcom said,

*"Full control would allow News Corp to take decisions involving Sky which are in the exclusive commercial interests of News Corp. In light of the fact that the proposed transaction would give News Corp total control of Sky, we consider it would result in a reduction in the number of persons with control of media enterprises and that Sky would cease to be a distinct media enterprise."*²⁴

With 21CF substituted for News Corp, this merger would have the same effect. In its report for the Secretary of State, Ofcom concluded the same:

²³ Ofcom's approach in 2010 was in line with that taken by the Competition Commission in the 2007 Sky/ITV case. See Competition Commission (2007), paragraph 5.15

²⁴ Ofcom (2010), paragraph 1.17

*"Fox already owns 37.19% of the voting shares in Sky, which gives Fox material influence over Sky. Fox's proposed acquisition of the remaining shares in Sky would represent a move from partial to full control. Full control of Sky would allow Fox to do a number of things it cannot do at present, including taking decisions which are in the exclusive commercial interests of Fox."*²⁵

This is an important change. For instance, it is not at the moment in the interest of most of Sky's shareholders that Sky News be used as an instrument of political influence for the benefit of 21CF. If the Murdochs were to try and turn it into such an instrument, they could expect resistance from the independent shareholders and directors of Sky, who may feel that that would be damaging to Sky in the long run. We would point out that only just over half of the votes of other Sky shareholders supported James Murdoch's appointment as chairman of Sky.²⁶ The Murdochs plainly cannot always count on the support of the other Sky shareholders. In 2006 Rupert Murdoch complained about his lack of power over Sky in evidence he gave to the Lords Communications Committee.²⁷

What matters from the perspective of plurality policy is the concentration of influence in too few hands: that could be in a company, an individual owner, or – as in this case – a family. Control over the operations of both 21CF and News Corp is very much concentrated in the Murdoch family's hands. The following demonstrates the real extent of the MFT's control over both companies:

1. The MFT's roughly 39% share of voting stock in both 21CF and News Corp gives it the largest share of votes held by any one shareholder in those companies by far.
2. The Murdochs occupy top executive positions at both companies: Rupert Murdoch is executive co-chairman of both News Corp and 21CF, and a director on the board of both. He has also been acting CEO of Fox News since Roger Ailes stepped down in July 2016. Lachlan Murdoch is executive co-chairman of both News Corp and 21CF, and a director on the board of both. James Murdoch is CEO of 21CF and a director on the board of both News Corp and 21CF.
3. Through his 39% of voting stock, Rupert Murdoch has maintained uninterrupted executive control of News Corporation for the 34 years of its

²⁵ Ofcom (2017a), paragraph 3.26

²⁶ The Guardian, "James Murdoch re-elected Sky chair despite shareholder revolt" 13 October 2017 <https://www.theguardian.com/business/2017/oct/12/james-murdoch-re-elected-sky-chair-despite-shareholder-rebellion>

²⁷ House of Lords Communications Committee (2008a), p. 119, paragraph 47

existence, and has done so (sharing control with his two sons James and Lachlan) since News Corporation's split into 21CF and News Corp in 2013.

4. The Murdochs also own non-voting stock in 21CF and News Corp. If there were any serious prospect of a challenge to their control of either company, that non-voting stock could be traded for voting stock to shore up their control.
5. The Murdochs have in the past taken steps to protect their executive control of their companies. In May 2013, the *Financial Times* reported that "*News Corp has adopted a 'poison pill' to prevent challenges to Rupert Murdoch's control of his family media empire, as it splits into separate entertainment and publishing businesses. The group named directors for the two new boards on Friday and announced that the division would happen on June 28. It also unveiled a plan to let existing shareholders – including the Murdoch family – buy new shares at a 50 per cent discount if anybody were to buy 15 per cent or more of either company's class B voting shares. The plan, effective for a year, would allow the Murdochs to dilute anybody attempting to take control of either company in a period when, News Corp noted, there may be heavy trading in both stocks. That should reduce the risk of challenges such as that mounted by John Malone in 2004, when he began building a 16.3 per cent voting stake in News Corp. Mr Malone ultimately traded his shares for Mr Murdoch's interest in DirecTV.*"²⁸ In June 2015, News Corp approved the extension of this shareholder 'poison pill' that, in the words of the *Financial Times*, "*maintains the Murdoch family's effective control of the publishing company*" for another three years.²⁹
6. Prince Alwaleed bin Talal, who controls the investment vehicle Kingdom Holding Company, holds a 6.6% share of 21CF's voting stock with which he supports the Murdochs' control over the company. As the *Financial Times* reported, "*Prince Alwaleed had used his stake to bolster Mr Murdoch during the 2011-12 phone-hacking scandal, where the media billionaire was heavily criticised, and his son, James Murdoch, faced a protest vote from investors.*" When he sold down his stake in News Corp, the paper quoted him as saying, "*We remain firm believers in News Corp's competent management, led by CEO Robert Thomson, and are fully supportive of Rupert Murdoch and his family... Our investment in Twenty-First Century Fox, constitutes a solid foundation for our longstanding relationship that we expect will endure.*"³⁰

²⁸ Financial Times, "News Corp adopts 'poison pill' share plan to protect divisions" 24 May 2013

<https://www.ft.com/content/b4f00712-c475-11e2-bc94-00144feab7de>

²⁹ Financial Times, "Murdochs extend 'poison pill' defence at News Corp" 18 June 2015 <https://www.ft.com/content/547057a0-15d8-11e5-a58d-00144feabdc0>

³⁰ Financial Times, "Murdoch loses Saudi ally at News Corp" 4 February 2015 <https://www.ft.com/content/6660164c->

7. While a check on the Murdoch family's influence in theory, in reality the other shareholders in 21CF and News Corp have not checked that influence. Many shareholders do not attend AGMs, and therefore 39% of voting stock (backed up by Prince Alwaleed bin Talal's 6.6% in the case of 21CF) is often enough to win key votes. Moreover, if the Murdochs abuse the influence of their news outlets in the UK to serve their companies' commercial interests, shareholders may simply not *care*, or even favour such behaviour. We supply much evidence in parts 4 and 5 that aggressive pursuit of commercial interests is very much the motive behind a great deal of the Murdochs' abuse of influence, and explains many of the scandals that have taken place at their companies. The Murdochs acquiring tremendous and unacceptable political influence in the UK is against the interests of the British public, but very likely *in the interest of* 21CF and News Corp shareholders. They therefore cannot be relied upon to prevent abuses of influence which harm the interests of the British public. By contrast, using Sky to advance the interests of 21CF and News Corp is not necessarily in the interests of the other Sky shareholders, so they can be relied on more.
8. The directors of News Corp and 21CF include a number of long time Murdoch employees, who have failed to effectively challenge the Murdochs on many occasions. Neither the significant corporate governance failures highlighted by the phone hacking scandal, nor the appointment of James Murdoch to CEO of 21CF - despite the severe criticisms Ofcom made of his conduct as executive chairman of News International - seems to have occasioned any challenge from board members.

21CF argued in its initial briefing that "*the Transaction will not increase the scope for co-ordination of the editorial output of the News Corp newspapers and Sky News*".³¹ We accept that these assets would, after this transaction, continue to be part of separate companies. However, the fact of common control over those two companies by the MFT means the plurality problem posed is fundamentally the same as in 2010: the Murdochs acquiring too much influence. If two newsrooms answer to the same owner, they need not be merged to end up having the same voice. Horizontal links are not necessary to produce uniformity across outlets, because the vertical structure of control terminates in the same place: the Murdoch family.

The Murdochs seek to exert concerted influence on the editorial direction of the news outlets they control, and whether those outlets are part of separate companies is irrelevant to that influence. Journalists at Murdoch-controlled companies know the Murdochs' views and

[ac49-11e4-9d32-00144feab7de](#)

³¹ 21st Century Fox (2016), paragraph 4.8-11

understand their companies' commercial interests. They know that to get on in their job, and especially to get promoted, they would do well to promote those views and interests. The opportunities for promotion are considerable: many Murdoch employees have been promoted up to senior corporate positions.³² The 'carrot' of promotion as well as the 'stick' of sacking has the effect of securing the adherence of employees to the Murdochs' views and aims. Indeed, former senior Murdoch employees have given evidence that being able to anticipate the position the Murdochs will want them to take on any given issue is a quality necessary to do well at the Murdochs' companies. We quote that evidence in part 4.

The Murdochs take key decisions which shape the editorial direction of outlets they own, including appointing and firing executives and editors. This extends quite far down the hierarchy at their companies. See, for instance, a 2006 *Guardian* interview with George Pascoe-Watson on his appointment as *Sun* political editor: "*How involved was the Sun's proprietor Rupert Murdoch [in the decision to appoint him]? Pascoe-Watson replies carefully: 'It is a position that Mr Murdoch was advised about and discussed with [Trevor] Kavanagh [Pascoe-Watson's predecessor]. And he had to grant his permission. So this was very much an issue which went right to the top of the company.'*"³³ Likewise, Rebekah Brooks told the Leveson Inquiry that her appointment as *Sun* editor in 2003, and then as CEO of News International in 2009, was decided by Rupert Murdoch, in the latter case in conjunction with James Murdoch, then executive chairman of News International.³⁴

In part 4 of this submission, we also provide considerable evidence of the Murdochs' strong control over the editorial output of both 21CF and News Corp, along with evidence of a marked uniformity of views across the assets they control. This speaks directly to what the Court of Appeal has said should be the focus of a plurality analysis, the "*actual extent of control exercised and exercisable over a relevant enterprise by another.*"³⁵

The static effect of the acquisition on plurality

Turning to the effect of the acquisition on plurality in the UK, we begin with quantitative analysis of news consumption. Ofcom's plurality assessment framework has three quantitative aspects: availability, consumption and impact, which we now look at in turn.

The effect of this merger will be to reduce the range of available voices in the UK. Although it would leave the number of available news outlets unchanged, it would reduce the owners of

³² Recent examples include Rebekah Brooks (edited *The Sun* and *News of the World*, became CEO of News UK), Robert Thomson (edited *The Times*, became CEO of Dow Jones and then News Corp) and David Dinsmore (editor of *The Sun* and now COO of News UK).

³³ The Guardian, "I was groomed by Trevor Kavanagh" 2 January 2006 <https://www.theguardian.com/media/2006/jan/02/pressandpublishing.sun>

³⁴ The Leveson Inquiry (2012c), p. 18, 21

³⁵ Court of Appeal (2010), paragraph 121

news providers. Post-merger, 21CF would have full ownership and total control and Sky. Because the MFT also has control over News Corp, which owns newspapers available in the UK, 21CF's acquisition of 100% of Sky would have the same result as in 2010: a reduction in the number of persons with control of media enterprises in the UK. Sky would no longer be a distinct and independent media enterprise.

It is part of 21CF's case that *Sky News* has a strong track record of editorial independence. We agree, but we believe that this transaction would end that independence. *Sky News* would, over time, become run along much the same lines as other news outlets the companies the Murdochs run have full control over. Moreover, we believe the CMA cannot put much weight on the resolution passed by 21CF's board to protect *Sky News*'s editorial independence. First, there is nothing to stop 21CF altering or revoking the resolution after the transaction. Second, the measures contained in the resolution are, we believe, weak. (We address the value of undertakings to protect editorial independence more in part 4, where we also detail the Murdochs' track record of breaking promises made to secure an acquisition.) The end of *Sky News*'s independence would clearly constitute a reduction in the different available voices available to the British public.

Sky News is currently available on TV 24 hours a day, on commercial radio through the bulletins it supplies, and online through its website and app, giving it the ability to reach across different parts of the population, including those groups who do not yet use the internet for news. As *Sky News* is a free source of news across all the platforms it is available on, this acquisition will particularly affect the available options for those less able to pay for news.

In its report for the Secretary of State, Ofcom found that analysis of its news consumption data showed that this acquisition would constitute a meaningful reduction in plurality in the UK. In looking at consumption, Ofcom uses two primary metrics: the reach of individual news sources, and their 'share of references', Ofcom's bespoke cross-platform metric. Looking at its news consumption data for 2016, its main conclusions were:

- **“Television:** *Sky News was used for national and international news on a weekly basis by an average of 9% of adults. It was the fifth most viewed source of television news based on weekly reach and the fourth most viewed source of television news across all channels based on time spent. For current affairs, Sky News has the fifth highest average weekly reach and share of total time spent watching current affairs.*
- **Printed newspapers:** *News Corp's collection of print titles are the most widely read UK-wide titles of any newspaper group, with a reach of 15% in 2016.*
- **Radio:** *Sky and News Corp each have a significant presence on radio. Sky is the sole supplier to Independent Radio Network (IRN), which supplies most commercial radio stations with news; while News Corp owns Wireless Group, which includes talkSPORT, talkRADIO and Virgin Radio.*

- **Online:** 70% of internet users use either *The Sun* or *Sky News* online. *Sky* and *News Corp* also submitted data that suggests that *Sky News* and *The Sun* receive millions of monthly visitors from intermediaries, and that these audiences have grown substantially since July 2016.
- By bringing together the largest UK-wide newspaper group with one of only three significant wholesale providers of television news and current affairs, both of which may have extensive reach online and through intermediaries, the transaction would increase the reach and share of consumption of news providers under the material influence of the Murdoch Family Trust.”³⁶

The combined MFT outlets would be used for news by “three in ten adults (31%) who consumed news on any of the main platforms”. Only the BBC and ITN have higher shares; the next-largest after the MFT outlets is DMGT, with 17%. The wholesale share of reference accruing to MFT outlets would be 10%: lower than the BBC (42%), in line with ITN (11%), and much higher than DMGT (4%). Ofcom has noted that qualitative factors limit plurality concerns about the BBC and ITN. The BBC is publicly owned and regulated; it is obligated to ensure internal plurality. This alleviates concerns about one person or ‘voice’ having too much influence. ITN has a weaker ‘voice’ than the MFT outlets because of “the business need for ITN to reflect the preferred styles, tones and editorial approaches of the retail news providers with which it provides news under contract (ITV, Channel 4 and Channel 5)”.³⁷

It is important to realise that Ofcom’s cross-platform ‘share of references’ metric weights sources based on frequency of use, but not duration or intensity of engagement. When Ofcom counts the number of uses of different sources a person make in a week, sitting in front of the TV evening news for an hour or reading a newspaper counts for the same as a brief look at a website or listening to the radio in the car, despite the fact that the first two are likely to be much longer and deeper forms of engagement. Time spent with newspapers tends to be much greater than time spent with online sources, as recent research has shown.³⁸ The average case of TV news consumption - watching a news bulletin or an episode of *Newsnight* - is likely to be longer and more in-depth than the average visit to Facebook or the Mail Online website. News Corp and Sky’s combined share of time spent with news sources is therefore likely to be understated by Ofcom’s share of references metric.³⁹

³⁶ Ofcom (2017a), paragraphs 6.1.1-4

³⁷ Ofcom (2017a), paragraphs 6.4-5

³⁸ Thurman (2017)

³⁹ This is just one of several ways Ofcom’s news consumption data may understate the true consumption and impact of MFT-controlled news outlets, explored in more detail in Appendix 1.

When it looked at the impact of different news sources, Ofcom found that at the moment, *Sky News* is an important and trusted source of news for its audience, broadly comparable in these respects to the public service broadcasters. This is true across the platforms it operates on. However, we would particularly stress the importance of TV. Ofcom's data shows clearly that TV is still by some way the most important platform for news in the UK, and that TV news is highly trusted.⁴⁰ If Rupert Murdoch follows through on his previously declared intention to make the *Sky News* channel into "*a proper alternative to the BBC*", he would have a powerful instrument for influencing opinion and the news agenda in the UK in terms of reach, consumption and impact.⁴¹

The rise of social media

21CF argues that because increasing numbers of people are getting their news through Facebook and Twitter, and because these platforms make a wide range of news sources available to their users, the shift to online is increasing multi-sourcing and the plurality of news consumed in the UK. However, Ofcom has found that 52% of people do not use the internet at all for news, and 80% do not use social media for it.⁴² In general, Ofcom found the notion that online is transforming plurality unpersuasive. It said, "*we do not consider that the growth of online news is likely to have a significant impact on consumption of traditional news providers for some time.*"⁴³ We point out below that there are huge differences between audience groups in the use of the internet and social media for news. In part 3, we explain why the shift to online actually threatens the plurality of original news production.

There are a number of other problems with 21CF's analysis. First, Ofcom's data shows that users of social media do not trust them or view them as important news sources to anything like the degree they do for broadcasters, including *Sky*.⁴⁴ Facebook and Twitter are trusted less by their users than the *Sun* - the least trusted of all newspapers - is by its readers. The *Times* is trusted far more by its readers than Facebook or Twitter are by their users.⁴⁵

Second, as Ofcom found, much of the news consumed through social media is news published by the *Sun* and *Sky News*. This is true on Twitter as well as Facebook. Rob Kenny's analysis for 21CF argues that the fact that the *Sun* and *Sky News* are the two most 'liked' UK news sources after the BBC on Facebook is not significant because "*'likes' of brands are but one input into a highly complex algorithm which drives what individuals see.*

⁴⁰ Ofcom (2017a), figures 7.1, 7.2 and 7.3

⁴¹ House of Lords Communications Committee (2008a), p. 119, paragraph 47

⁴² Ofcom (2017a), paragraph 7.24

⁴³ Ofcom (2017a), paragraph 6.56

⁴⁴ Ofcom (2017a), paragraph

⁴⁵ Ofcom (2017a), figures 7.1, 7.2 and 7.3. Paragraph 7.16

Certainly it does not guarantee that content from the outlet in question in this many news feeds.” Instead, he suggests, the CMA should pay attention to the most ‘shared’ content on Facebook.⁴⁶ We suggest that a user’s decision to actively click ‘like’ on a news source is one of the most useful ways Facebook has of finding out what people want to see on Facebook. As one writer on digital media has put it, *“Facebook’s draw is its ability to give you what you want. Like a page, get more of that page’s posts; like a story, get more stories like that; interact with a person, get more of their updates. ... from the system’s perspective, success is correctly predicting what you’ll like, comment on, or share. That’s what matters.”*⁴⁷ Actively ‘liking’ a news source is clearly going to be important evidence that the user wants to see more of it. This is, at any rate, a matter Facebook could discuss with the CMA. It could also provide data on the most consumed UK news sources.

While ‘liking’ a news source does not automatically guarantee all its posts to Facebook will be seen, users *can* choose the option of seeing everything posted by the sources they most value. Moreover, there is no guarantee that content shared by friends - Kenny’s preferred metric - will be seen by the user either. Which content is most shared is also a flawed proxy for which sources are most consumed on Facebook, because sharing is in important ways an *expressive* activity. The user is personally associating themselves with the content they share with friends. Users are less likely to share content from widely mistrusted brands, like the *Sun*, or articles on less ‘respectable’ subjects. That does not mean they are not consuming such content through Facebook, however.

Third, both 21CF and Rob Kenny argue that the *Sun* content consumed on Facebook is ‘lighter’, i.e. it is less likely to be ‘hard’ news about serious topics.⁴⁸ Indeed, Kenny suggests that it is true of online news consumption *in general*, which may be why social media is not widely rated an important news source.⁴⁹ But the implication of that fact is that the most influential platforms for news are likely to be other ones like print, TV and radio. If social media is generally used more for ‘lighter’ news, it clearly cannot be pluralising consumption of ‘hard news’ (the news most important for the plurality aims of having informed citizens and

⁴⁶ Kenny (2017), p. 36-7. Kenny suggests that the fact that the *Sun*’s coverage of one news story - the Grenfell Tower fire - was not as widely shared as that of other providers is a good indicator that it is not important on Facebook. We would point that the *Sun*’s coverage of this particular incident was criticised at the time. It was alleged one of its journalists impersonated a friend of a victim of the fire who was staying in hospital, in order to get an interview with him. (The Guardian, “Sun journalist ‘impersonated Grenfell Tower victim’s friend at hospital’” 16 June 2017 <https://www.theguardian.com/uk-news/2017/jun/16/sun-journalist-grenfell-tower-victim-hospital>) The *Sun* was also criticised for releasing pictures of the man whose fridge was alleged to have started the fire. (The Sun, “Owner of the Grenfell Tower flat where inferno started tells of agony as death toll is feared to top 100” [originally title: “First pictures of minicab driver whose faulty fridge started the fire”] 15 June 2017 <https://www.thesun.co.uk/news/3808199/first-picture-of-mini-cab-driver-whose-faulty-fridge-sparked-grenfell-tower-fire/>) These incidents plausibly led to less sharing of *Sun* content about the fire. Moreover, since the *Sun* is, broadly speaking, supportive of the Conservative party, this was perhaps a news story where the *Sun* was less prepared than other news providers to publish articles criticising the Government over the fire.

⁴⁷ Alexis Madrigal, “What Facebook Did to American Democracy” 12 October 2017 <https://www.theatlantic.com/technology/archive/2017/10/what-facebook-did/542502/>

⁴⁸ 21CF (2017), paragraph 4.38 (vi); Kenny (2017), p. 37

⁴⁹ Kenny (2017), p. 55-6: “Publishers’ content...needs to adapt to social media’s requirements...Examples of content adaptation include: a shift to ‘softer’ content; ‘click-bait’ headlines; and preference for content that may be viral.”

preventing too much influence over the political agenda) as much as consumption data alone might suggest it is.

As well as being 'lighter', the news consumed online is less likely to be original and more likely to have been copied from another source. The ease and speed of copying a news article and publishing it online has led to endemic plagiarism in online news publishing. For instance, an anonymous source working for one national newspaper website recently told Press Gazette about a culture of 'ripping' stories from rival news websites - simply copying stories with minimal rewriting, with newly-recruited journalists often doing little else.⁵⁰ News Corp has in the past complained about plagiarism of its content by *Daily Mail Australia*.⁵¹ The ease of plagiarism is one major reason original reporting is a less profitable activity online than on other platforms. Online news is therefore more likely to have been copied from newspapers or TV news sources than vice versa. Meanwhile, TV news often follows the agenda set by the press, as we show in more detail in section 3 below. The result is that despite continuing circulation decline, the national press continues to exert outsized influence on the news agenda in the UK, and simple measures of news consumption are likely to count as 'online news' stories which in fact originated elsewhere, giving a misleading impression of where agenda-setting power really lies.

Rob Kenny also claims that social media intermediaries perform an important independent 'curation' role which reduces the influence of news producers over the news agenda and therefore increasing plurality.⁵² We again stress that according to Ofcom's data, people do not seem to trust the news they get from social media as much as from other sources. We suggest that insofar as they *do* trust social media for news, it is likely to be because they are using it to access news sources that they trust. The widespread concern about 'fake news' that has spread, particularly since November last year, has no doubt damaged users' confidence in sources they see on Facebook that they are not familiar with. It is important to recognise that a fundamental difference between Facebook and news producers' websites is that the layout of news articles on the former is tailored to each individual user. Facebook's interest is simply in maximising the engagement of all users with its platform. To that end, the news 'agenda' that each user sees will be strongly tailored towards what Facebook's algorithm predicts the user wants to see, whatever that is in each individual case.⁵³ Often this will mean replicating the news agenda of other websites the user would find at other websites they might have visited instead for news.

⁵⁰ Press Gazette, "Source: 'Ripping culture' at national newspaper website prompts most graduate trainees to leave journalism for PR" 3 August 2017 <http://www.pressgazette.co.uk/source-ripping-culture-at-national-newspaper-website-prompts-most-graduate-trainees-to-leave-journalism-for-pr/>

⁵¹ The Guardian, "News Corp accuses Daily Mail Australia of plagiarism" 9 June 2014 <https://www.theguardian.com/media/2014/jun/09/news-corp-accuses-daily-mail-australia-of-plagiarism>

⁵² Kenny (2017), p.

⁵³ This, incidentally, is where the real problem of 'fake news' comes from: some Facebook users want to believe things that are not true, and unscrupulous publishers produce false or inaccurate articles which Facebook's algorithm will then serve to those people, because the algorithm correctly predicts it is the kind of article they want to read.

Moreover, it is important to recognise that social media platforms have a strong interest in maintaining a perception of neutrality among users, in order to maximise their reach across the population. If Facebook were perceived to be biased towards a particular political view, for instance, it could lead people of different views to use the platform less.⁵⁴ In short, Facebook's interest in maximising user engagement and maintaining user perceptions of its editorial neutrality heavily constrain its ability to offer a different news agenda to the one the user would find at other sites they visit for news.

Kenny argues that the increasing use of data to inform editorial decision-making reduces the ability of journalists to set the news agenda. He claims that *"historically the choice of an outlet's news agenda and the lines stories took would have been made entirely on the basis of editors' and journalists' judgement."*⁵⁵ But as Ofcom commented in their report, *"news providers may choose to take audience metrics into account but this is only one consideration."*⁵⁶ We would add that Kenny also presents a false picture of the past: clearly editors and journalists would have been heavily influenced by which stories sold newspapers, as TV news producers are by viewing figures. (Indeed, it is often claimed that Rupert Murdoch's particular commercial genius has been to know what newspaper readers and TV news viewers in the US really want.) In this way, Kenny overstates the changes brought by the internet. Moreover, it is hard to see why the *granularity* of data on online news consumption in itself means editors have less power to choose their outlet's agenda online. Excessive reliance on data to drive editorial decision-making is one of the factors that causes publishers to produce manipulative 'click-bait', which they are increasingly recognising harms user perceptions of their content's quality in the long term.

Kenny also argues that the shift to the internet is causing a rise in multi-sourcing. However, all the available evidence, including Ofcom's news consumption reports, suggests that online news in the UK is still heavily dominated by established newspaper and TV news providers. The higher number of sources people use online largely reflects the online convergence of newspapers and TV news. Ofcom's survey counts the same producer's output on different platforms as different sources, so rising multi-sourcing is in part accounted for by rising access to traditional providers online.

In addition, Ofcom's report for the Secretary of State noted that on the platforms where MFT outlets are more prominent, like TV and print, multi-sourcing is much lower. It also found that the average number of sources people use for news across platforms has changed little since 2013.⁵⁷ Between 2015 and 2016, there is a small 0.2 increase in the average number

⁵⁴ For example, Facebook has said in relation to voting, "We as a company are neutral—we have not and will not use our products in a way that attempts to influence how people vote." See Alexis Madrigal, "What Facebook Did to American Democracy" 12 October 2017 <https://www.theatlantic.com/technology/archive/2017/10/what-facebook-did/542502/>

⁵⁵ Kenny (2017), p. 53

⁵⁶ Ofcom (2017a), paragraph 7.23.2

⁵⁷ Ofcom (2017a), paragraphs 4.25-6, figure 4.7

of sources used by people who use the internet for news. However, looking at Ofcom's news consumption report, it seems that the biggest increase in traffic to an online news source between 2015 and 2016 went to the *Sun*, which took down its paywall in the intervening period.⁵⁸ For all of these reasons, 21CF's claims that there is increasing multi-sourcing and that it alleviates plurality concerns are unpersuasive.

21CF has also sought to argue that the media is being 'disintermediated' by the rise of direct communication between mass audiences and, for instance, politicians. It argues that this means "*traditional media companies cannot act as gatekeepers or control the news agenda.*"⁵⁹ It cites the examples of Jeremy Corbyn and Donald Trump using Twitter.

We reject this analysis. The first and most fundamental point is that the media still plays a considerable role in deciding whose tweets are news, and which tweets become the subject of news reports reaching the vast majority of the population that does not use Twitter at all, let alone for news. For instance, many more people learn about what Donald Trump has tweeted from TV news and newspaper reports, and from the Twitter accounts of major news organisations and prominent professional journalists, than from following Trump directly on Twitter. Secondly, in a world where politicians make all sorts of claims on social media, the importance of an independent media that scrutinises the truth of those claims or the motivations behind them is still very great. The media remains a crucial arbiter the public turns to in order to learn which of Donald Trump's tweets are actually true. Thirdly, much of the influence that media ownership brings stems from being able to deploy journalistic resources to uncover information which some people do not want uncovered, and in finding and telling the stories of people who lack large Twitter followings or have other means of mass communication at their disposal. Twitter does not pluralise control over these functions of news producers, which are vital to democracy.⁶⁰

The case of the 2017 General Election

21CF also argues that the 2017 General Election shows that the Murdochs do not have too much influence over the political process, saying that "*despite exerting all the influence they had, newspaper titles, including the Sun, were unable to sway the outcome.*" It contends that

⁵⁸ Ofcom (2017c), figure 4.3 shows a very large increase in the combined print and digital readership of the *Sun* between 2015 and 2016.

⁵⁹ 21CF (2017), paragraph 4.38 (iv)

⁶⁰ Even those who tweet have to get their news from somewhere. In Donald Trump's case, it turns out that he gets it primarily from the (markedly pro-Trump) *Fox News*, owned by 21CF; and the (also pro-Trump) *New York Post*, owned by News Corp. New York Times, "When a Pillar of the Fourth Estate Rests on a Trump-Murdoch Axis" 12 February 2017 <https://www.nytimes.com/2017/02/12/business/media/rupert-murdoch-donald-trump-news-corporation.html> "Now Mr. Murdoch's rivals are trying to guess what he might seek from Washington, having reached the apex of his American power at 85 with the closest ties to a White House that he's ever had. At the very least, they are girding for him to use his influence to block AT&T's proposed purchase of Time Warner, which Mr. Trump railed against during the campaign. Mr. Murdoch made an unsuccessful bid for Time Warner in 2014. They read the tea leaves last week in *The New York Post*, where Mr. Murdoch's conservative-populist fingerprints are most easily dusted into view. The paper, the first one Mr. Trump reads each morning, ran yet another piece suggesting that the president might oppose the deal because of CNN's aggressive coverage of him. (It's a division of Time Warner.)"

instead social media was decisive both in determining which media stories were consumed, and in enabling the campaigns to bypass the traditional media. It claims that following the election, “*there has been widespread agreement that the election showed the influence of the press has substantially waned.*” To prove this point, it cites a number of articles published in the immediate aftermath of the election.⁶¹ Again, there are many reasons to reject 21CF’s analysis.

First of all, it is worth remembering that the Conservative party, which both News Corp newspapers strongly backed, did actually win the most votes at the election. The Conservatives did particularly well among older voters, who still rely on traditional sources of news like the *Sky News* channel, the *Times* and the *Sun*, and who do not use social media for news. Indeed, the proportion of *Sun* readers who voted Conservative actually increased substantially compared to 2015.⁶² In other words, the case for the end of newspapers’ influence over voters has probably been overstated. What did not happen was the Conservative landslide that had been widely predicted. But the more relevant test of ‘too much influence’ is the counterfactual, what if the media owner in question had not exerted their influence over public opinion and the political process? For instance, it is arguable that the Conservatives would have performed worse than they did, had News Corp titles not editorialised strongly in favour of the party - not just at election time but for years beforehand too.

In addition, other factors unique to the 2017 election may explain the result better, like the Conservative party’s election campaign, which was widely criticised both during the campaign period and after the result. It does not prove a media owner does not have too much influence over the political process if the party their news outlets vigorously back conducts what is widely agreed to be a very poor election campaign and then fails to secure a landslide majority. The poor Conservative campaign, together with other unusual features of the election like the circumstances in which it was called and the predominance of a single issue - the European Union - which usually rates low down the list of voters’ concerns at General Elections, made 2017 quite a unique election. The CMA should therefore be extremely wary about drawing the conclusion from it that the influence of Rupert Murdoch over public opinion and the political process is no longer too large. Ofcom’s report for the Secretary of State concluded it was “*too early to determine the relative influence of social media and traditional media.*”⁶³ We would add that only last year, many commentators attributed the vote to leave the European Union to the influence of vigorous campaigning by newspapers including *The Sun*.

⁶¹ 21CF (2017), paragraph 4.39

⁶² According to YouGov’s ‘mega poll’ of voters in the two elections, 59% of *Sun* readers voted Conservative in 2017 (<https://yougov.co.uk/news/2017/06/13/how-britain-voted-2017-general-election/>) compared to 47% in 2015 (<https://www.theguardian.com/media/2015/jun/05/independent-readers-voted-against-papers-election-endorsement>).

⁶³ Ofcom (2017a), paragraph 8.13

Indeed, the arguments of several of the articles 21CF cites in support of its claims about the 2017 election are premised on what one called the “*conventional wisdom ever since [1992 that] has held that you cannot win a UK election if Murdoch’s papers don’t back you.*”⁶⁴ In other words, they suggest that 2017 was the first election for decades which Rupert Murdoch did not play a major role in deciding.⁶⁵ We submit that it would be an absurdly high threshold to set to say that a media owner only has ‘too much influence’ over politics if general elections *always* go the way they want, irrespective of other factors. The pervasiveness and persistence of the belief that Rupert Murdoch’s influence has been so great as to be able to repeatedly ‘sway’ elections is testimony that in recent times his influence over the political process in the UK has been widely judged to be too great.

The widespread belief on election night that the Conservatives were on course to win a landslide, and the shock of the actual result - despite slowly accumulating evidence over the course of the campaign that the result would be much closer - is, we submit, in fact *testimony* to the abiding power of the media, including News Corp newspapers, to shape opinion: in particular, to shape widespread expectations about what will happen in the future. This is an important form of influence over public opinion because it strongly shapes how people decide to act in the present.

Finally, the CMA’s issues statement correctly identifies that it must not only assess the level of influence the Murdochs have at the moment, but the increase in their influence that would result from this acquisition. Online news and social media are two platforms where our foregoing analysis shows they would particularly increase their influence, owing to *Sky News’s* reach and share of consumption online, and its large following on Facebook and Twitter.⁶⁶

The dynamic effects of the acquisition on plurality

Data on current shares of news consumption only indicates the shares likely to obtain immediately after the transaction. The CMA must also consider plurality on a dynamic basis too, as Ofcom did in its 2010 report, and again in its assessment of this transaction. Both 21CF and Sky are companies with huge revenues and considerable profits. The combined

⁶⁴ James Rodgers, “The election wot The Sun (and the rest of the UK tabloids) never won” 9 June 2017 <https://theconversation.com/the-election-wot-the-sun-and-the-rest-of-the-uk-tabloids-never-won-79208>

⁶⁵ E.g. Jasper Jackson, “Labour’s success shows the political hegemony of the right-wing press is ending” 10 June 2017: “*Is this the election The Sun finally became the one wot lost it? The Rupert Murdoch-owned newspaper has been renowned for its ability to pick an electoral winner, indeed, to create one, for decades. It has been on the right side of every election since Margaret Thatcher came to power in 1979.*”

Only last year the newspaper’s editor Tony Gallagher crowed about the continuing power of the press after the nation voted for the Brexit his paper had pushed for. “So much for the waning power of the print media,” he told the Guardian’s Jane Martinson.”

⁶⁶ *Sky News* has 7.9 million ‘likes’ on Facebook, of which 1 million are by UK Facebook users, making it the third most ‘liked’ news source in the UK on Facebook, behind *BBC News* (2.1m) and *The Sun* (1.3m). See Kenny (2017), p. 36. *Sky News* also has 4.3 million followers on Twitter.

revenues of the two companies would have been \$42bn in 2016. Sky's revenues alone are over double those of the BBC. If this acquisition is cleared, there would be substantial resources available to be channelled into UK news and current affairs content, both at *Sky News* and potentially Sky's other UK channels. If there was a substantial investment, Sky's share of news consumption in the UK could increase considerably.

Ofcom's analysis of the plurality implications of this transaction focused solely on *Sky News*. Given that Sky does not currently produce or import much current affairs programming for its TV channels outside of *Sky News*, that is understandable. However, we believe the CMA should consider the possibility that the Murdochs could seek to increase spending on current affairs programming on other Sky channels too if this acquisition is approved. Their record at both *Fox News* and *Sky News Australia* is one of creating highly opinionated, conflict-oriented TV programmes that offer an entertaining and compelling version of the news (albeit one that is frequently biased and often inaccurate). It is highly plausible that they may seek to create similar programming here. What is not in any doubt is that if they believed it was in their interest, they would have considerable financial means to do so. As we go on to show in extensive detail in part 4 of our submission, the Murdochs actively seek influence over public opinion because they understand the commercial value of such influence to them all too well. We contend that they would therefore have both means and motive to produce this kind of programming if this acquisition is cleared.

The Murdochs have shown in the past their willingness to take considerable losses in order to establish or maintain a dominant position in the market. Speaking to the House of Lords Communications Committee in 2006, Rupert Murdoch *"stated that sometimes it was necessary for a large company like News Corp to invest in a service in order for it to fulfil its true potential. Fox News took five years of losses before it became so successful that cable providers would not dare to drop it."*⁶⁷ Similarly, between 1993 and 2005, it has been estimated that the *Times* lost *"the best part of £175m"* as the result of a price war Rupert Murdoch started to stave off the threat of the new *Independent* newspaper, which had by 1993 begun to overtake the *Times's* circulation. The aim of the price war was to undermine a smaller competitor, and the Office for Fair Trading concluded that this was the case in a 1999 ruling.⁶⁸

The other major news producers in the UK lack the financial resources that would be available to the merged entity. Many currently find it difficult to invest: the BBC's total revenue is less than an eighth that of Sky and 21CF combined, and its funding is shrinking not growing in real terms. Many newspaper publishers trying to build sustainable digital businesses are seeing online advertising revenue growth level off or even decline. Some, like *The Guardian* are running unsustainably large losses and have laid off journalists. Some newspaper publishers are likely to have to put up paywalls around their content in future to

⁶⁷ House of Lords Communications Committee (2008a), p. 118

⁶⁸ BBC News, "OFT rules Times price cut 'predatory'" 21 May 1999 <http://news.bbc.co.uk/1/hi/business/349402.stm>

become financially sustainable. Facebook is making moves to allow its users to subscribe to news sources on Facebook, an attempt to help make charging for news more profitable for news providers.⁶⁹ Clearly this may encourage those providers most in need of reducing their losses or shoring up their profits to start charging for access in the near future. If this happens, the share of news consumption going to free news providers can be expected to increase.

Overall, the considerable ability of the merged entity to subsidise a UK news operation represent a powerful advantage over rivals, which could lead to a much-increased share of UK news consumption over the long term. Even if the merged entity did not radically increase its investment in UK news and current affairs content, the company's ongoing ability to subsidise *Sky News* would help it to be the 'last man standing' in an online news market where most of the big UK players are struggling to make much money from what they publish.

Differences between audience groups

The CMA has indicated that it intends to examine the impact of this acquisition on particular audience groups.⁷⁰ When the Competition Commission considered the plurality aspects of the 2007 Sky/ITV case, it noted that "*some specific groups are more likely than others to take their news content from ITV, BSkyB and News International newspapers. For example, the C2DE socio-economic group, compared with the UK population as a whole, consumes more of the national news provided by ITV and by News International.*" It ultimately concluded that "*whilst viewing shares and readership vary somewhat by socio-economic group, there are no fundamental differences in the significance of ITV, BSkyB and News International to particular sections of the UK population.*"⁷¹ However, since 2007, significant differences have opened up between age groups in the platforms they use to access news.

The Reuters Institute for the Study of Journalism at Oxford University produces an annual digital news report, based on a survey of news use in a number of countries including the UK. Their analysis supports Ofcom's in showing that there is a considerable age divide in which platforms people used for news.⁷² Over-55s and C2DEs are particularly likely to be affected by this transaction, because the evidence shows that both those groups use TV and newspapers for news more than the other parts of the UK population, and also because the latter group is less able to pay for news sources. The ability of 21CF to maintain or increase subsidies to *Sky News* that will keep it free to access online is therefore particularly likely to

⁶⁹ Wall Street Journal, "Facebook to Test News-Subscription Sign-Up" 19 October 2017 <https://www.wsj.com/articles/facebook-to-test-news-subscription-sign-up-1508435365>

⁷⁰ CMA (2017), paragraph 29

⁷¹ Competition Commission (2007), paragraphs 5.49-50

⁷² Reuters Institute (2017), p. 11

increase its share of consumption among C2DEs, especially if other major online news sources start charging for access in the near future.

The claims made in 21CF's submission and supporting analysis that the shift to online solves plurality problems by pluralising the sources of news consumed, while flawed on their own terms, are also, in any event, largely irrelevant at the moment to the two audience groups we have identified. Neither do they address the question of which outlets will have the financial resources to maintain free access in the future. In part 3 of our submission, we go on to explain in more detail why the CMA must focus particularly on original news production, and why it is that the economics of online are so challenging. The latter gives cause to think that the plurality of original news production may decline, not increase, in future.

3. Rising use of the internet for news is leading to a reduction, not an increase, in plurality at the level of news production

In its submissions in support of this acquisition, 21CF accepts the merger reduces plurality. But it claims that plurality was deemed sufficient by Parliament in 2003 and that the trend towards consumption of news online has increased plurality since then. Therefore the acquisition does not create a situation of insufficient plurality. In our introduction, we explained why 21CF's premise, that 2003 constitutes the right benchmark for sufficiency, is wrong. In part 2, we showed that the reduction in plurality caused by this transaction is a very significant one, and addressed some of 21CF's analysis claiming the internet solves the plurality problem. In this part of our submission, we show how the internet is reducing, not increasing, plurality at the level of news production.

Our analysis proceeds in four steps. First, we explain why the analytical focus of any plurality assessment must be on control over original news production capacity. This, we argue, is central to the plurality objectives, particularly to preventing one media owner having 'too much influence' over public opinion and the political agenda. This agenda-setting power is not fully captured in the quantitative measures Ofcom uses to analyse the effects of media mergers on plurality. Second, we explain how the shift to online is undermining original news production capacity because fundamental features of the online environment make news a much less profitable activity there. In brief, the internet has increased the public good qualities of news, undermining the ability of commercial providers to provide a sufficient plurality of news provision. Publicly subsidised options are therefore increasingly necessary, unless we accept a future media environment of such radically reduced plurality that it may be insufficient to sustain the 'well-functioning democracy' it is the core goal of plurality policy to protect. Third, we provide evidence that the internet is not sustaining a plurality of news producers, and is in fact contributing to declining plurality. Fourth, we suggest that the effect on the journalistic job market may lead to a decline in internal plurality and editorial independence at those news organisations that manage to survive. Once the proper dynamics of online are understood, 21CF's claims of increasing news plurality online must be rejected by the CMA.

Why the CMA's plurality assessment must focus on original news production capacity, not simply reported consumption or self-assessed impact of news sources

Whether citizens are informed, and whether a media owner has too much influence over public opinion and the political agenda, are fundamentally determined by who has control

over news production and how they choose to use that control. In a very basic sense, news producers determine *what the news is*. The objectives of plurality policy therefore demand that an assessment of plurality focus on original news production capacity. Among other things, news producers have:

- Trained professional journalists with contacts, experience and time to report on stories
- Money which they can use to back those journalists up with a range of resources:
 - Copy editing and fact checking
 - Legal advice and protection
 - Data analytics which tells them the stories getting the most traffic online, and which helped them maximise the reach and impact of the stories they publish.
 - Private investigators and other means of surveillance and investigation
 - Polling and other professional means of assessing public opinion
- Access to a range of institutions and individuals who want to reach the news producer's audience, or shape the producer's coverage for other reasons. (E.g. accreditation for their journalists)
- Leads given to them by people who want a story or issue reported on
- A brand which leads people to take what they publish seriously – whether they agree with what has been published or not

In short, they have the resources to create news stories, and thereby effectively decide what the news is. Equally, they have the ability to decide what to *exclude* from the news agenda. For instance, many people have alleged that phone hacking was widely known within the newspaper industry, but the fact of its widespread use only became known many years afterwards. This was, at least in part, because many people in the news industry who could have reported on the subject decided not to, for one reason or another. The existence of social media is sometimes claimed to have ended this 'gatekeeping' power of the professional media, but many stories still require considerable resources and professional expertise and accreditation to report on. Anyone intending to publish a story which offends wealthy or powerful individuals and organisations needs protection against retaliation, which

means journalists working at large news producers are still much better placed than ordinary citizens to publish such stories.

All this gives those who own or control news producers considerable influence. They can influence how considerable journalistic resources are deployed. They influence what news is produced, and therefore what subjects are on the news agenda. That agenda helps determine what is on the political agenda, and what the public debates, including on social media. News stories set off public discussion on the issues they raise. They determine which issues the finite time available for public discussion is spent on. In this way, the increased opportunities online has brought for debate or discussion, via social media like Facebook or Twitter, may have reduced the ability of news producers to persuade readers with opinion columns, but they still powerfully shape what is discussed. If a story is big enough, they can also force other news producers to follow the agenda they have set; that then amplifies the original producer's influence further. A host of state and civil society organisations can be put under an effective obligation to 'react' to a news story involving them if it is run by a news producer with a large audience of its own, or with lots of influence over the agendas of other news producers. Most importantly, news producers can still powerfully shape people's perceptions of what is actually *going on* in the world.

The agenda-setting capacity of news producers has been shown to have a powerful effect on shaping what citizens think; for instance, which areas of public policy they consider important.⁷³ Similarly, news stories have a powerful 'priming' effect on citizens: as Iyengar and Kinder put it in their book on US TV news, "*By calling attention to some matters while ignoring others, television news influences the standards by which governments, presidents, policies, and candidates for public office are judged.*"⁷⁴ Both agenda-setting and priming effects are generated not just by the decision to report a particular story, but the prominence and importance given to it. The news producer's view about the importance of a story is reflected in placement decisions, and that view is another part of the information being conveyed to the consumer of the media in question. Even news regulated for impartiality, like TV news in the UK, has these effects. That is one reason why impartiality regulation cannot remove concerns about who controls our broadcasters.

The fundamental importance of news producers' information-producing and agenda-setting functions is reflected in the plurality objectives: **informed** citizens and influence over public opinion and the political **agenda**. Lord Justice Leveson said in his Report that concerns about media ownership concentration were motivated by the "*concern that a small number of media owners could have too much influence in terms of content and, in particular, agenda setting.*"⁷⁵ The Secretary of State for Culture, Media and Sport has acknowledged the importance of focusing on news production in a plurality assessment. The DCMS's letter of 3

⁷³ See Iyengar and Kinder (2010) – especially chapter 3

⁷⁴ Iyengar and Kinder (2010), p. 63

⁷⁵ <http://leveson.robertsharp.co.uk/C/chapter4/#para1-1>

March to the merging parties said, “*the originators of news are for the most part the traditional newspaper and broadcaster providers with access to journalist resources. Social media may therefore be extending the reach of traditional providers such as The Sun, The Times and Sky News.*”⁷⁶ We agree with the Secretary of State. Ofcom has also acknowledged the importance of agenda-setting power in the past⁷⁷, and did so again in its report for the Secretary of State.⁷⁸

Within the news landscape, some news outlets set the agenda more than others; a range of factors determines which. First of all, the more resources an outlet has to engage in original news production, the more stories it will create that other outlets might pick up; if it lacks those resources, it becomes dependent on other outlets for stories to run. The resources an outlet has will, in turn, be strongly determined by its funding model: if it is a commercial entity, by how effectively it monetises the news it produces.⁷⁹ Ofcom’s plurality measurement framework explicitly recognises that funding models are an important contextual factor in a plurality assessment.⁸⁰ In addition to funding models and the quantity of original journalism they enable, the size of an outlet’s audience will obviously also help determine its influence on the news agenda. A story on the front page of the *Sun* or the *Mail* is harder for other news producers to ignore than a story on the front page of a local newspaper.

In the UK, both academic studies and testimony from people who have worked in politics and the media suggest that UK broadcasters follow the agenda set by newspapers much more than the other way round. An academic analysis of broadcast news coverage in the run-up to the 2015 General Election showed the extent to which broadcasters followed the agenda set

⁷⁶ DCMS (2017), p. 4

⁷⁷ For instance, in its 2015 media ownership rules review, it noted, “*While declining consumption might suggest declining impact, newspapers continue to be effective at influencing the overall news agenda. For instance, many broadcast programmes run features on what the papers say each day, extending newspaper influence beyond their own readership to that of broadcasters’ audiences.*” Ofcom (2015b), paragraph 3.14

⁷⁸ Ofcom (2017a), paragraphs 8.6-8

⁷⁹ The *Guardian* reporter Nick Davies draws this link clearly in his 2009 book, *Flat Earth News*, while analysing the influence of the *Daily Mail*: “*The first thing to recognise about the Daily Mail is that it is the most successful and powerful newspaper in Britain. ... Every year for the past fifteen years, it has turned a substantial profit – no other mid-market or quality newspaper in Britain has anything like that track record. This financial strength has allowed it to protect its journalists from the kind of cuts which had done such damage elsewhere, leaving the Mail as arguably the most potent news-gathering machine in Britain. ... That commercial success is linked to its outstanding political influence. It is because it has these resources that the Mail, more than any other paper, is in a position to release reporters from churnalism and break big stories which will be picked up and run by the rest of Fleet Street, often recycling the Mail’s angle as well as its choice of subject. Government pays attention to the Mail.*” Davies (2009), p. 365

In a letter to the European Commission’s Vice-President for Competition in September 2014, News Corp CEO Robert Thomson argued that Google undermines the ability of original content producers, including news producers, to make a fair return for their original production, and that this has a knock-on effect on the quality of democratic debate by damaging news production. He said, “*The internet should be a canvas for freedom of expression and for high quality content of enduring value. Undermining the basic business model of professional content creators will lead to a less informed, more vexatious level of dialogue in our society. There will be no shortage of opinions, in fact, opinions will proliferate, but they will be based on ever flimsier foundations. The quality of discourse will inevitably deteriorate and the intemperate trends we are already seeing in much of Europe will proliferate.*” <http://newscorp.com/2014/09/17/news-corp-opposed-googles-european-commission-settlement-offer-welcomed-competition-commission-reconsideration/>

⁸⁰ Ofcom (2015a), paragraph 3.17

by the press, and particularly the News Corp-owned *Sun* and *Times*.⁸¹ In this way, TV news in the UK often acts to amplify the influence of newspapers, and therefore the agenda-setting power of their owners. Newspapers are still influential despite their declining circulation because they still have significant journalist resources to call upon – quality newspapers especially so.⁸² In the run-up to the referendum on whether the UK should leave the European Union, it was again the newspapers that set the agenda – not just that of broadcasters, but also online. For instance, social media shares of articles mentioning Brexit were dominated by articles produced by newspaper publishers.⁸³

The role of newspapers in setting the TV news agenda has been attested to by a number of people who have worked in the media industry and in politics. Robert Peston, former BBC News business editor said in June 2014 that the corporation *“is completely obsessed by the agenda set by newspapers... There is slightly too much of a safety-first [attitude]. If we think the Mail and Telegraph will lead with this, we should. It’s part of the culture.”*⁸⁴ John Ryley, head of *Sky News*, said a week later in reaction to Peston’s comments, *“I have always been shocked from the very first time I started in [TV] news at the reliance on newspapers... I am really keen we do not pursue newspaper stories – that perhaps happened in the past. Everyone [at Sky News] accepts my take on the news agenda.”*⁸⁵ Tony Blair said in his witness statement to the Leveson Inquiry that newspapers *“influence hugely the agenda of the broadcasters who tend, in my experience, to default to the print stories in choosing which broadcasting stories to go with.”*⁸⁶

This illustrates the fact that ability to set the news agenda varies considerably across the UK’s news producers, with the press continuing to have a outsized influence. In part this is achieved through setting the agenda at broadcasters, in part through driving the social media debate online.

The effect of this merger would be to increase the Murdochs’ control over *Sky News*, enabling them to amplify the agenda-setting power of their newspapers. Where newspapers may set the agenda for the day in the morning, *Sky News*’s 24-hour news channel would

⁸¹ Cushion et al. (2016)

⁸² For instance, the accounts of Times Newspapers show that it employed 478 editorial staff in 2016, up from 459 the year before. However, most other news producers do not publish the number of editorial staff they employ. The CMA could request this information from across the industry to work out the share of journalist resources News Corp and 21CF would control if this acquisition is approved.

⁸³ BuzzFeed, “Britain Has No Fake News Industry Because Our Partisan Newspapers Already Do That Job” 24 January 2017 <https://www.buzzfeed.com/jimwaterson/fake-news-sites-cant-compete-with-britains-partisan-newspape>

⁸⁴ The Guardian, “Robert Peston: BBC follows the Daily Mail’s lead too much” 6 June 2014 <https://www.theguardian.com/media/2014/jun/06/bbc-obsessed-agenda-daily-mail-robert-peston-charles-wheeler>

⁸⁵ The Guardian, “Sky News boss criticises press influence on television newsrooms” 12 June 2014 <https://www.theguardian.com/media/2014/jun/12/sky-news-boss-criticises-influence-newspapers-daily-mail> However, the data for the 2015 general election does not bear this out. Cushion et al. (2016) found that *Sky News* ran stories originating from newspapers more than any other broadcaster, and much more than the BBC did.)

⁸⁶ The Leveson Inquiry, Witness statement from the Rt hon Tony Blair, p. 2 <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Tony-Blair1.pdf>

allow the Murdochs to extend their agenda-setting power across the rest of the day. *Sky News*'s website and apps would extend that influence further online. Ofcom has found that in 2016, the *Sky News* channel had the fourth-largest reach of any news source in the UK, while *Sky News* has the fourth-largest online reach of any news source, behind the BBC, Facebook and Google.⁸⁷ Given the possible dynamic effects we outlined in part 2, the Murdochs' agenda-setting power could increase considerably over time. We now examine the effects of the rise of online on news production in more detail.

The effects of the rise of online as a source of news

The rise of the online as a source of news is frequently held to be a force for greater pluralism in news. However, while it may be easier for people to share news stories, participate in a community reaction to a news story, record evidence of major events, or engage directly with people who produce or are in the news, those changes do not necessarily mean control over news production has become more plural in the online era. There are some commonly alleged ways that online is a force for greater plurality:

1. The rise of social media and other intermediaries – Facebook, Twitter, Google, etc.
2. The entry of new digital-only brands like Huffington Post and BuzzFeed
3. The lower barriers to creating content online – blogs, 'citizen journalists', YouTube vloggers, etc.
4. The greater choice of news sources available online

Some of these factors are pointed to by 21CF as evidence plurality is improving because of the internet. However, we believe that their view of the internet's impact is wrong. Instead, it has actually undermined commercial news production. As a result, many companies that mostly or only produce news are facing severe financial challenges. It is highly likely that more journalists will be laid off, more outlets will consolidate, and some firms may go under. There has already been much of all three among local newspapers and radio. Below, we give an extended explanation for why this is the case. However, it is important to emphasise for the moment that neither Sky nor 21CF argues that Sky is a failing firm which needs to be taken over by 21CF in order to survive, or that absent this acquisition Sky will be unable to continue subsidising *Sky News*. There is no sense in which this acquisition is necessary to protect plurality.

⁸⁷ Ofcom (2017c), figure 6.1

Public good qualities of news online

In order to charge the public for news, producers need to be able to effectively exclude them from consuming that news unless they pay. It is a fundamental quality of most privately provided goods that they are excludable. Without excludability, a good is either a 'common pool resource' (if rivalrous) or a public good (if non-rivalrous); in either case the good will be unsuited to private provision. The internet makes it much quicker, easier and cheaper to copy basic information like news stories. As a result, the wall of 'excludability' around news has collapsed. This is a major reason why so many news websites are free to access, and why so much online news is copied from other websites. It is also one of the factors causing the public to move away from (paid-for) print newspapers and towards (free) online sources. Consumption of the news is non-rivalrous, so one way of describing what has happened would be to say that the internet has increased the public good qualities of news.

	Excludable	Non-excludable
Rivalrous	Private goods food, clothing, cars, parking spaces	Common-pool resources fish stocks, timber, coal
Non-rivalrous	Club goods cinemas, private parks, satellite television	Public goods free-to-air television, air, national defense

If charging for a good is not possible because maintaining excludability is challenging, a common solution in media is to make the good free to access and include advertising in it. Then, the attention of the consumer can be sold to businesses and others who want to have that consumer's attention. For instance, anyone with a TV aerial can receive free-to-air television, so it is non-excludable. In the era before cable, satellite and the internet, TV in the UK was funded solely by a compulsory licence fee (the BBC) and advertising (ITV, Channel 4, etc.). Across the entire twentieth century, newspaper publishers not only charged for their products, but filled them with advertising. Some newspapers generated as much as 80% of their revenue from the latter. However, the second major effect of the internet has been to radically undermine the privileged position in the sale of advertising that used to be enjoyed by newspaper publishers. This has occurred in two main ways.

The transformation of advertising by the internet

Classified advertising used to be dominated by newspapers and magazines. Local and regional newspapers were particularly dependent on the revenue it provided. However, for many categories of classified advertising, the internet has led to the structural

disintermediation of news publishers. There was never any deep necessary connection between supplying classified advertising space and producing news, it was simply that before the internet came along the most efficient, and particularly localised, consumer delivery vehicle for classified ads and news was a printed paper.

The internet has severed that connection: classified advertising now mostly occurs on dedicated websites which have no need to supply news content in order to be visited. The consumer simply searches on Google for a classified site. Moreover, a large portion of what might formerly have been classified advertising has been replaced by Google search. This has been particularly devastating for local newspapers, who depended on classified advertising much more than national newspapers, both as a source of revenue and as another reason for the consumer to buy a local paper. This change happened extremely rapidly: between 2005 and 2010, print classified advertising revenue halved.

Display advertising moved online later and more gradually than classified advertising, but since display advertising must chase wherever consumer attention goes, as consumers have used the internet more – including for news – display advertising spend has followed them. In the online environment, advertising can be put next to almost anything. News producers no longer occupy a privileged position as a ‘bottleneck’ between businesses and particular groups of consumers. The massive expansion of display advertising supply online has led rates to collapse there, with knock-on effects on other platforms like print too.

The impact of digital giants on the economics of online news

Digital giants like Google and Facebook who count their users not in the hundreds of thousands or millions, but in the billions, can make meaningful money in this environment. These companies provide platforms and digital services for free, and use the data collected to enable them to (a) improve their services and build new ones, and (b) target advertising much more effectively than news publishers can. Quality newspapers were especially lucrative in the twentieth century because they offered a uniquely *targeted* way of reaching more affluent demographics. Facebook and Google can target advertising in a much more fine-grained way, based on vastly greater knowledge of their users than news producers tend to have of theirs. Moreover, Facebook and Google have no content production costs; their marginal costs are much lower than a news producer’s. Google Chrome is used much more widely and deeply than a news article ever will be, so the cost of improving it can be spread across billions of users, rather than the tens of thousands who might be interested by a particular UK news article. Next to the quantity of data Chrome gives Google about a user, the amount derived by news producers from people reading their news content is paltry.

Google and Facebook act as intermediaries between users and the content and services they want, for billions of people across the world. Their role as intermediaries is to a large extent *premised* on users perceiving them as *neutral*, as mentioned in part 2. Engaging in original news production, with the editorial decision-making that would entail, would damage

perceptions of their neutrality. Therefore we should not expect that Facebook and Google will increase plurality in the future by investing their profits into original news production. However, because they are important distribution channels for news content, digital intermediaries are in a position to take a share of the advertising revenue earned by news producers' content.

Facebook, in particular, acts as a gatekeeper between content creators and users who might want to consume that content. That does not mean that Facebook exercises anything like the editorial or curatorial control that a newspaper editor does: Facebook's concern is simply maximise user engagement with the Facebook platform. To that end, Facebook basically aims to serve the user whatever the user wants, whatever that may be. The result is that news producers have to bargain with a big, highly profitable digital intermediaries, with considerable commercial leverage over them. For instance, Google and Apple both require a 30% cut of any in-app payments made to news publishers through Google Play or Apple's App Store. So if a news publisher wants to charge for access to their content online – a challenging strategy anyway – they have to give these hugely profitable tech companies a cut so large it makes charging much less attractive.⁸⁸

All in all, the shift to online is a shift towards a platform which, though it offers many benefits of choice, convenience and instantly updated information, is a radically more difficult place to make money out of news production. Robert Thomson, the CEO of News Corp, explained the situation well in a 2014 letter to the European Commission complaining about Google: *"[v]irtually every newspaper in Europe is in the midst of upheaval, and some will surely not exist five years from now in part because of their own flawed strategy and lack of leadership, but also because the value of serious content has been commodified by Google"*. But it is not just because of Google – it is because of the fundamental nature of the internet. Thomson also referred to the *"[u]ndermining [of] the basic business model of professional content creators"* – clearly, in his eyes, online platforms threaten rather than contribute to plurality because they damage the profitability of news production. Again, in Thomson's words: *"Google will certainly be the winner, and among the losers will be those who create content and, undoubtedly, the people of Europe."*⁸⁹

The phenomenon Thomson refers to is clear from the data. The rise of online has coincided with the annihilation of the core revenue streams of print newspapers: paid circulation and print advertising. Online advertising revenue is dominated by Google and Facebook, who take around three-quarters of online advertising revenue in the US and over half in the UK.⁹⁰

⁸⁸ Contrast that with the situation in print: in the UK, newspapers have long been zero-rated for VAT; other countries have provided public subsidy for the distribution and delivery of newspapers, in recognition of their important civic function. This was the case for much of the nineteenth century in the United States, for instance. See McChesney and Nichols (2009). Online, however, Google and Apple treat news publishers no differently to anyone else.

⁸⁹ <http://newscorp.com/2014/09/17/news-corp-opposed-googles-european-commission-settlement-offer-welcomed-competition-commission-reconsideration/>

⁹⁰ In December, The Guardian reported, *"Google and Facebook will take more than 70% of all money spent on display advertising online in the UK by 2020, according to a report suggesting the firms will soon have an effective duopoly spanning the Atlantic. The two companies already account for about three-quarters of the £18.4bn display ad market in*

They are set to dominate growth in the future: Enders Analysis have reported that “90% of UK digital display [advertising] growth in 2016 was on Google and Facebook”. They estimate that national newspapers lost £5.80 of print revenue for every £1 of digital revenue they gained in the period 2011-15. In 2015, the figures were worse: £31 of print revenue lost for every £1 of digital revenue gained.⁹¹ Ofcom’s report for the Secretary of State noted that digital revenues increases are by no means making up for print revenue declines at UK national newspapers.⁹² Meanwhile, the Reuters Institute’s Digital News Report 2017 found that only 6% of the UK population with internet access pays for news online.⁹³

To recap:

1. The internet has undermined the excludability of news, and the profitability of original news production in turn.
2. Charging for news is harder in an online environment where news content can be copied easily. Only a few UK news publishers do it. A tiny portion of British public pays for news online.
3. News publishers have lost their privileged position in the sale of both classified and display advertising, and face competition from Google and Facebook, who have major advantages in data and targeting.
4. The development of digital intermediaries has made the economics of online news even more challenging for commercial news producers, including by making charging for news online harder.

the US, and 53% of the £4bn currently spent in the UK.” See “Google and Facebook to take 71% of UK online ad revenue by 2020” 15 December 2016 <https://www.theguardian.com/media/2016/dec/15/google-facebook-uk-online-ad-revenue>

⁹¹ Enders Analysis, *News brands: Rise of membership as advertising stalls [2017-011]*, p. 2, 8

⁹² See Ofcom (2017a), figure 4.8. National newspapers made £1,263m from print and £100m from digital advertising in 2011, for a total of £1,363m. In 2016, they made £676m from print and £179m from digital, for a total of £855m - a decline of over a third over five years.

⁹³ Reuters Institute (2017), p. 55. According to the report (p. 6), 92% of the population has access to the internet.

The internet has particularly damaged original news production

Some aspects of this situation were predicted by Rupert Murdoch himself in 2009.⁹⁴ As Murdoch rightly argued then, these changes damage all kinds of journalistic production. However, we would emphasise that they particular harm *original* news production. Because of the speed and ease with which information can be obtained and reproduced online, the effective ‘window of exclusivity’ around an original news story has collapsed to mere minutes or seconds. News publishers can copy each other’s stories quickly and repackage them for their own audience. Particularly in the English-language news market, consumers can get the basics of a story from virtually any provider they like without having to go to the “source”. Twitter users can learn about breaking news for free from journalists who tweet the news as it happens, before they have even had the chance to write up an article.

The commercial returns to doing news origination have therefore dropped precipitously. Yet as we have already outlined, professional news production requires a host of costly resources, and the process of chasing leads and investigating stories can often come to nothing.⁹⁵ The inevitable result is that more costly forms of news production are cut back: investigative reporting which sometimes requires months of research, and the resources not to be intimidated by legal threats; foreign reporting; legal and scientific correspondents; anything that requires journalists to be trained, skilled and experienced.

In aggregate, the effect is simply that, insofar as the private sector is relied upon to produce original news, the shift to online will result in *less original news being produced*. What remaining news there is will be explained, reacted to, commented upon and debated more than ever. Opinionated and entertaining writing cannot be copied as easily by rivals, so news publishers have an incentive to invest more in those kinds of articles. Articles simply expressing opinions about the news are much more suited to sharing on social media (because the sharer can use the piece as an easy way to communicate their own views to their friends.) As a result, many news publishers have come to increasingly focus on publishing reaction to, and explanation and analysis of, the news, rather than on original news production itself.

⁹⁴ “Quality content is not free. In the future, good journalism will depend on the ability of a news organization to attract customers by providing news and information they are willing to pay for. The old business model based mainly on advertising is dead. Let’s face it: A business model that relies primarily on online advertising cannot sustain newspapers over the long term. The reason is simple arithmetic. Though online advertising is increasing, that increase is only a fraction of what is being lost with print advertising. That’s not going to change, even in a boom. The reason is that the old model was founded on quasi-monopolies such as classified advertising, which has been decimated by new and cheaper competitors such as Craigslist, Monster.com, and so on. In the new business model, we will be charging consumers for the news we provide on our Internet sites. The critics say people won’t pay. I believe they will, but only if we give them something of good and useful value. Our customers are smart enough to know that you don’t get something for nothing. That goes for some of our friends online too. And yet there are those who think they have a right to take our news content and use it for their own purposes without contributing a penny to its production. Some rewrite, at times without attribution, the news stories of expensive and distinguished journalists who invested days, weeks or even months in their stories—all under the tattered veil of “fair use.” Rupert Murdoch (2009)

⁹⁵ Felix Salmon, “Content Economics, part 3: Costs” 19 August 2013 <http://www.reuters.com/article/us-felixsalmon-opinion-idUSBRE9710QF20130819>

Lower barriers to entry online

21CF argued in its preliminary briefing to the DCMS that in the online environment there are “*lower barriers to entry*” allowing new digital-only players to enter the news market, and therefore that plurality is increasing. As evidence, it pointed to BuzzFeed and Huffington Post.⁹⁶ Its online infographic, “*The way Britain consumes entertainment and news has changed since 2010*”, points again to Huffington Post and BuzzFeed.⁹⁷ Its initial submission to the CMA again points to BuzzFeed and Huffington Post.⁹⁸ If online were a fertile soil in which a wide range of new suppliers could grow, we might expect 21CF to be able to point to more than two.⁹⁹

As major new sources of original news, those two outlets are also questionable examples to point to. Although they do some good journalism, the number of full-time journalists they employ is small, and much of what they produce is not ‘hard news’.¹⁰⁰ The Huffington Post only employs 40 journalists in the UK.¹⁰¹ BuzzFeed’s entire UK staff (include non-editorial) is

⁹⁶ 21st Century Fox (2016), paragraph 4.23(a)

⁹⁷ Alongside a range of other companies who either already produced news before the internet and are not increasing production, like the BBC and ITV, or do not engage in any original news production at all, like Amazon, Netflix, Apple, Virgin Media, and YouTube. https://www.21cf.com/sites/default/files/uploaded/investors/the_way_britain_consumes_entertainment_and_news.pdf

⁹⁸ 21st Century Fox (2017), paragraph 4.7

⁹⁹ Ofcom’s most recent news consumption report shows that the only other digital-native ‘news’ outlets in the top 24 online news sources are Yahoo News, MSN News and The Lad Bible, used by 4%, 3% and 3% of those who use the internet for news, respectively. Ofcom (2017c), figure 5.4

¹⁰⁰ News Corp’s attitude to the Huffington Post was reported in *The Observer* in 2009: “*News Corp views search engines and online “aggregators”, such as the Huffington Post or the Drudge Report, as the biggest source of leakage of its costly, carefully tailored content. At a recent media summit in Beijing, [Rupert] Murdoch described them as “plagiarists” and “content kleptomaniacs”. This year, Thomson blasted them as “parasites”.*” *The Observer*, “Murdoch’s attack dog snarls at the ‘parasites’ threatening his master” 1 November 2009 <https://www.theguardian.com/media/2009/nov/01/wall-street-journal-robert-thomson-digital-content>

A report in *The Australian* from the same year: ““*Right now, the most burden falls on the originators,*” [Thomson] said, referring to costs such as having foreign correspondents reporting from hostile areas. “*Google and Huffington Post are clever at what they do, but they are reverberation; they are not creation.*”” *The Australian*, “WSJ editor lowers boom on Google’s news ‘promiscuity’” 26 October 2009 <http://www.theaustralian.com.au/business/media/wsj-editor-lowers-boom-on-googles-news-promiscuity/news-story/ad1a73da44d59002a0adb50350057228>

Thomson made much the same point about BuzzFeed in 2014, saying “*There is so much rubbish that is passed off as journalism... There’s a numerical limit to numerical headlines like: ‘17 Ways to Keep Your Cat Happy.’*” In 2015, he said, “*If you look at a lot of so-called contemporary content sites, you know who they are, I don’t have to name and shame them – like BuzzFeed for instance – the amount of trash traffic on those sites is significant.*” *The Wrap*, “News Corp’s Chief Exec Slams BuzzFeed’s ‘So-Called Journalism’” 9 December 2014 <http://www.thewrap.com/news-corps-chief-exec-slams-buzzfeeds-so-called-journalism/> *The Guardian*, “News Corp chief criticises ‘trash traffic’ on BuzzFeed-style sites” 2 June 2015 <https://www.theguardian.com/media/2015/jun/02/news-uk-chief-buzzfeed-robert-thomson>

Some examples of BuzzFeed content sourced from other providers include: 8 May 2015: “*11 Things We Learned From Kris Jenner’s New York Times Profile: “Costco is a passion.” —Kris Jenner*” <https://www.buzzfeed.com/bricesander/costco-is-a-passion> 1 June 2016: “*12 Things We Learned From The Vice News Film About Jeremy Corbyn: The BBC is out to get him, apparently.*” <https://www.buzzfeed.com/emilyashon/12-things-we-learned-from-the-vice-news-film-on-jeremy-corby> 16 January 2017: “*11 Crucial Things We Learned From Donald Trump’s Interview With Michael Gove: The president-elect has given an interview to Michael Gove for The Times – here’s what you need to know.*” <https://www.buzzfeed.com/jimwaterson/xx-wtf-moments-from-donald-trumps-interview-with-michael-gov> Or the ‘how the internet reacted genre’, a Google site search of BuzzFeed for which returns upwards of 100 entries <https://www.google.co.uk/search?q=site%3Abuzzfeed.com+“how+the+internet+reacted”>

¹⁰¹ Kenny (2017), p. 28

80, a third the size of the number of editorial jobs lost in the *Guardian's* redundancy programme announced in March last year (including the first compulsory redundancies in its history) to stem the losses that have occurred because the revenue needed from digital advertising is failing to materialise.¹⁰² Indeed, digital revenue at Guardian Media Group actually declined between 2015 and 2016 from £83.8m to £81.9m.¹⁰³ Much the same has been occurring in the US, as *BuzzFeed* detailed in its April 2016 report, *"The Digital Media Bloodbath: Hundreds Of Jobs Lost"*: *"Since the beginning of last year, media companies with large U.S. digital operations have been shedding employees and even shutting down entirely. In total, more than 1,000 job cuts have been announced over the last 12 months, and industry watchers fear more to come."*¹⁰⁴ One of the reasons for this 'digital media bloodbath' is precisely the factor 21CF identifies as a reason to think plurality is increasing: the collapse in the barriers to entry, which has led to a flood of low-quality free content online, much of it not itself news but extracting, summarising or commenting on news produced elsewhere. This has helped reduce the returns to original news production for commercial news producers further.

Many of the people now able to publish online are not in the commercial news market: bloggers, academics, think tanks, companies. Anyone can publish, lots of people other than commercial news producers have reason to, and many of these people are not going to stop doing so any time soon: their income is not derived from the content they produce, so they are not in danger of going out of business. However, the fact that this increasingly 'long tail' of output exists does not mean that much of it reaches large audiences. Indeed, the large volume of articles online lowers the likelihood of any one article *being seen and consumed*. (Online is, in this sense, hugely reducing the importance of 'availability' as a plurality metric.) There may be large volumes of articles available, but expanding choice in options available should not be conflated with increasing plurality: plenty of articles are out there on the internet but being read by very small numbers of people. Yet agenda-setting power is partly determined by the size of an outlet's audience. This 'long tail' is a large volume of production

¹⁰² BuzzFeed, "BuzzFeed UK Editorial Staff Ask For Union Recognition" 30 November 2016. <https://www.buzzfeed.com/marieleconte/buzzfeed-uk-editorial-staff-ask-for-union-recognition> "A staff of roughly 80 employees work in the London office, including senior management, defined as those who manage managers." BuzzFeed has no offices in the UK other than London. (<https://www.buzzfeed.com/about/jobs?country=uk>) The Guardian, "Guardian Media Group to cut 250 jobs in bid to break even within three years" 17 March 2016 <https://www.theguardian.com/media/2016/mar/17/guardian-media-group-to-cut-250-jobs> "Guardian Media Group is planning to cut 250 jobs – including 100 in editorial – and to restructure the less profitable parts of the company in a bid to break even within three years...The announcement comes after a difficult year for the newspaper industry as huge digital firms such as Google and Facebook take the lion's share of advertising budgets while the growth of mobile proves harder to monetise than print for news organisations. The final edition of the Independent newspaper is to be published next week, and other newspaper groups are making significant job cuts."

¹⁰³ https://uploads.guim.co.uk/2016/07/27/GMG_Group_&_Company_Accounts_2016.pdf p. 3

¹⁰⁴ BuzzFeed, "The Digital Media Bloodbath: Hundreds Of Jobs Lost" 13 April 2016 <https://www.buzzfeed.com/matthewzeitlin/the-digital-media-bloodbath-hundreds-of-jobs-lost> The report continues, "While all media companies struggle in their own way, it is clear that all face a similar set of industry-wide problems. Companies reliant on digital advertising dollars have seen rates for display ads plummet as wave after wave of new competitors saturate the internet with content. Only those with the largest audiences and most sophisticated revenue machines have prospered; others, like Mashable, the International Business Times, and Gigaom, have all laid off staff...For media companies chasing the biggest possible audiences, it's hard to resist the lure of a story blowing up on Facebook. When the social network's algorithms smile upon a particularly shareable post, it can put it in front of millions of people — sometimes tens of millions. That has led many ambitious media companies to pursue Facebook traffic relentlessly — a pursuit some believe will be fatal to all but the biggest players."

accounting for a quite small share of consumption. It is so dispersed and uncoordinated that it cannot be said to exert the kind of influence on public opinion or the political agenda that is the concern of plurality policy.

Signs of declining original news production

The evidence of the damage online is doing to original news production has been available for years. Newspaper publishers have been laying off journalists for even longer as part of a drive to maximise profitability which saw some regional and local publishers achieve huge profit margins in the early 2000s.¹⁰⁵ Now, however, many local newspapers have closed or are run by shoestring staffs, and national publishers are increasingly exploring ways of consolidating:

- The Independent ended its print edition in March 2016
- Trinity Mirror is in talks to acquire the *Express* and the *Star* from Northern & Shell.
- The *Guardian* has considered switching to tabloid format and being printed by News UK.¹⁰⁶
- Several publishers are engaged in 'Project Rio', a project to explore the possibility of merging advertising sales operations across national publishers.

¹⁰⁷

More signs of the ill health of the news industry include:

- Billionaires buying formerly profitable newspapers and running them at a loss (Jeff Bezos and the *Washington Post*; the Lebedevs and the *Independent* and *Evening Standard*) or subsidising new websites (Pierre Omidyar's US politics site *The Intercept*)

¹⁰⁵ See Davies (2009), especially chapter 2; also this extract from *What do we mean by local? The rise, fall – and possible rise again – of local journalism*: <https://www.theguardian.com/media/greenslade/2013/aug/13/downturn-local-newspapers> "Just 10 years ago, local newspaper groups were among the most profitable companies in Britain. For example, Trinity Mirror's regional newspaper group reported a profit margin of 24% in 2003; Johnston Press 35% in 2004. They enjoyed near monopolies in their markets and achieved margins most businesses could only dream about. Those profits were not invested in either strengthening the print offering or developing online services to ensure local newspapers did not see their advertising revenues migrate to competitor platforms. The profits came mainly from cost reduction – some from more efficient working practices and economies of scale from greater consolidation, but too much from editorial cutbacks which have changed the nature of much local journalism in the UK, with the closure of many local offices and a growing reliance on agency and PR handout material."

¹⁰⁶ The Drum, "The Guardian considering switching to tabloid format and outsourcing printing to rival News UK" 24 January 2017 <http://www.thedrum.com/news/2017/01/24/the-guardian-considering-switching-tabloid-format-and-outsourcing-printing-rival>

¹⁰⁷ <http://www.thedrum.com/news/2017/02/21/project-rio-2017-launch-date-risk-internal-wrangle-between-publishers-rolls>

- News publishers asking for donations from readers (c.f. *The Guardian*, or the *New York Times*'s 'sponsor a student subscription' programme).¹⁰⁸ An industry in which major players are asking people to donate money to keep them afloat is not, we submit, a commercially healthy one.
- The reliance of many online players - including the new digital entrants cited by 21CF - on advertising alone. Advertising spending is highly pro-cyclical. A consumer recession, which has not occurred in the UK since the 2000s, could cause collapse, consolidation and layoffs at many news publishers.

The few news publishers who are making meaningful money out of online news tend to be doing so by turning themselves into information services aimed at business customers, with subscription fees much larger than most of the public can afford or are willing to pay: this is true of outlets like *Politico*, the *Financial Times* and *The Information*.¹⁰⁹ In part, these businesses have been able to flourish precisely because the decline of high-quality original news production at newspaper publishers has created a demand from businesses for reliable information services tailored to their needs. For instance, in the absence of a local newspaper industry supplying extensive coverage of state-level politics in the US, *Politico* has expanded in that direction.¹¹⁰

We believe that the situation which has long obtained at the local level – a marked lack of plurality because many local markets are simply sub-scale in the online environment – is occurring at the national level too. There is no real sign of an increasing plurality of national news producers, just their convergence onto the same platform. One important consequence of the decline in original news production is that those institutions who remain able to fund original news production will see their agenda-setting power *increase*. Social media and the pervasiveness of copying, 'explaining' and 'reacting' online may amplify the remaining producers' influence far beyond the direct consumers of their output.

We believe that it is at the level of original news production that the challenges posed by the internet for journalism are greatest, and it is at the level of original news production that this bid raises major plurality concerns. Allowing the Murdochs, who already have considerable

¹⁰⁸ Katharine Viner, "If you value the Guardian's coverage of Brexit, please help to fund it" 29 June 2016 <https://www.theguardian.com/politics/2016/jun/29/if-you-value-the-guardian-coverage-of-brexit-please-help-fund-it>
<https://www.nytimes.com/subscriptions/sponsor/lp8QRYY.html>

¹⁰⁹ A Financial Times annual subscription costs upwards of £300; Politico Pro subscriptions run into the thousands of pounds.

¹¹⁰ Ken Doctor, "Newsonomics: From national, Politico expands into global — and local" 29 January 2015 <http://www.niemanlab.org/2015/01/newsonomics-from-national-politico-expands-into-global-and-local/> "The Pro products are aimed at insiders: people in the topical fields who want to know the more important details immediately, with as much context for potential decision-making as possible. Individuals can pay four or five figures per year for the actionable intel, but customers are more likely to be companies buying licenses to allow a certain number of their staffers to have access."

control over journalist resources through their control of the *Times*, the *Sun* and their Sunday equivalents, to also acquire full control over a major TV news producer, *Sky News*, would be profoundly damaging to media plurality in the UK. To reiterate, there is no suggestion that, absent this merger, Sky would be unable to survive, or to continue to fund *Sky News*. Therefore, this merger cannot be justified as a necessary compromise in the level of plurality we should accept. It is a wholly avoidable reduction.

Expanding consumer choice

In addition to all the changes laid out above, the internet has caused a radical expansion in consumer choice: choice not just of *what* news to consume, but *whether* to consume news at all. Formerly, print media enjoyed a number of 'location monopolies' which video media and PCs found difficult to reach – the morning commute, on-the-go, in bed, the kitchen table, the garden. The arrival of the mobile internet through mass adoption of smartphones and tablets has opened up those locations to a range of activities formerly not possible: social media, mobile games, TV shows and films, and more. The expansion of consumer choice has been going on for decades, with new choices coming in waves – the Princeton academic Markus Prior has shown the dramatic effect of the expansion of cable TV on US audiences for TV news.¹¹¹ The mobile internet is simply the latest step in this process.

In a high-choice environment, the importance of well-funded, quality news options becomes even more important: producing quality news is costly, and making it interesting enough to compete with the huge range of alternative activities - rather than simply being able to rely on a lack of alternatives - is even more costly. The cheaper and more profitable option is often to just make news less informative and more like entertainment. Because the internet has dramatically worsened the profitability of news production, commercial news providers are less and less able to compete with entertainment alternatives, and often try to make their news output more 'entertaining' to compete. In practice, this can have the effect of making their output less informative and more trivial.

Public subsidy for news is not growing

One way of remedying this situation would be to increase public subsidies for news production.¹¹² However, public service broadcasters' spending on news and current affairs

¹¹¹ See Prior (2007)

¹¹² In *The Death and Life of American Journalism*, Robert McChesney and John Nichols argue that news subsidy per capita is strongly correlated with quality of democracy as measured by international indexes compiled by Freedom House and *The Economist*: "The democratic nations with the very largest per capita journalism subsidies in the world dominate the [Freedom House freest press systems] list. Four of the first five nations Freedom House lists are the same nations that topped The Economist's Democracy Index, and all rank among the top seven per capita press subsidizers in the world. In fact, the lists match to a remarkable extent. That should be no surprise, as one would expect the nations with the freest and best press systems to rank as the most democratic nations. What has been missing from the narrative is that the nations with the freest press system are also the nations that make the greatest

peaked in 2002 at £435m; by 2015 it had fallen to £311m. The BBC has had its funding frozen and then substantially cut by the Government since 2010. Newspaper publishers have argued that the BBC should have no presence in online news because it is having a ‘crowding out’ effect on their ability to make money online. After the 2015 general election, George Osborne decried the BBC’s ‘imperial ambitions’ in online news: “*You wouldn’t want the BBC to completely crowd out national newspapers...If you look at the BBC website it is a good product but it is becoming a bit more imperial in its ambitions.*”¹¹³ Commercial news publishers are finding it hard to compete online with a rival that not only has a more secure source of funding than them – the licence fee – but a host of other advantages, including higher levels of public trust in its journalism, and greater perceived accuracy and reliability, as Ofcom’s news consumption reports have consistently shown.¹¹⁴ This suggests they will be hostile to increases in the BBC’s funding for the foreseeable future.

As we demonstrate in part 4 below, both Rupert and James Murdoch have long been publicly hostile to the idea of public subsidy for journalism. We believe there is every reason to think that if this merger is approved, they would use the increased influence full control of *Sky News* would give them to push, both publicly and privately, for further cuts to publicly funded media. This would damage plurality further. We also provide evidence suggesting Rupert Murdoch may have done this already in 2015, when the BBC’s last licence fee settlement was being negotiated.

Declining internal plurality caused by a difficult job market for journalists

An extremely challenging operating environment for commercial news producers online, together with cuts to the BBC’s funding, have combined to produce a difficult job market for journalists. Conditions and pay are generally poor; paid training is difficult to get; there are periodic layoffs like those already mentioned; the number of new digital jobs created is not making up for the jobs being lost elsewhere. Arguably, the situation today is nothing more than the culmination of decades-old trends which began long before the internet was widely available: trends which began with the decline of newspaper circulation but have been exacerbated by the de-unionisation of the journalistic profession and the wave of consolidation in local and regional newspapers in the 1990s and 2000s.

public investment in journalism *and therefore provide the basis for being strong democracies.*” See McChesney and Nichols (2009), p. xxix-xxxiii

¹¹³ The Times, “Osborne: BBC must curb online ambitions” 6 July 2015 <http://www.thetimes.co.uk/article/osborne-bbc-must-curb-online-ambitions-q5g880zj2mw>

His remarks were received positively by the newspaper industry and echoed in editorials in the *Times* and the *Telegraph*. The Times, “Imperial Overreach” 7 July 2015 <http://www.thetimes.co.uk/article/imperial-overreach-8mbqml02k93> The Telegraph, “The imperial BBC” 6 July 2015 <http://www.telegraph.co.uk/news/bbc/11719843/The-imperial-BBC.html>

¹¹⁴ The only major news outlets online that come close on those scores are *The Guardian* and *Sky News*. The former is a non-profit trust, and the latter is subsidised by Sky. Neither suggests news is a profitable activity for commercial companies.

According to Nick Davies's *Flat Earth News*, "*just over half of the National Union of Journalists' 8,000 provincial members [lost] their jobs between 1986 and 2000; some local newsrooms were replaced by regional hubs, cut off from their communities; and senior reporters were replaced with low-paid trainees. With rare exceptions, these papers were reduced to mere churnalism*".¹¹⁵ That consolidation enabled publishers to reach extremely high profit margins in some cases.¹¹⁶ Likewise, phone hacking and other illegal or unethical newsgathering techniques were often resorted to as cost-saving methods of generating lucrative exclusives, which might otherwise have required teams of highly skilled, experienced - and therefore expensive - journalists to produce.¹¹⁷ The Leveson Report highlighted how in some newsrooms, the central question as regards the legal risk accruing from a story is simply, will the profits it generates be worth the costs of the civil action?¹¹⁸ The phone hacking scandal occurred in the context of commercial pressure applied relentlessly to journalists who, because of the difficult job market and the de-unionisation of the profession, had very little bargaining power with their employers and so were likely to resort to unethical news gathering techniques in order to keep their jobs. The Leveson Report's analysis of the *News of the World* supports this view. Critical enabling factors were a lack of adequate regulatory safeguards on the press, and inadequate corporate governance and compliance regimes at publishers, including News Corp.

Ofcom's plurality measurement framework includes among its list of 'qualitative contextual factors', "*the potential power or editorial control exercised by owners, proprietors or senior executives within news organisations*" and "*internal plurality – i.e., how far an organisation enables, supports or promotes a range of internal voices and opinions*".¹¹⁹ The range of internal voices and opinions expressed in the output of news organisations will, we argue, inevitably be a function of the internal bargaining power of journalists and editors on the one hand, versus that of managers and owners on the other. If journalists have strong bargaining power with their employer, they are likely to have more professional autonomy and control over the journalism they produce.¹²⁰ If that is correct, then the dire state of the journalistic job market is another reason to be concerned about the future of media plurality in the UK.

To sum up the argument of part 3: we have demonstrated that original news production must be the core focus of Ofcom's plurality assessments because it is at that level that the greatest power over public opinion and the political agenda is exercised. We have then gone on to show why, for a host of reasons, the effect of the internet is not – as 21CF alleges – to

¹¹⁵ Davies (2009), p. 65

¹¹⁶ In 2005, profit margins were 35% for Johnston Press, 28% for Trinity Mirror, 29% for Newsquest and 19% for Northcliffe Media.

¹¹⁷ See Davies (2009), chapter 7 on 'The Dark Arts' for an early account of this issue. Revisited in Davies (2014)

¹¹⁸ The Leveson Report, Part F, Chapter 6, Sections 2.55-6 <http://leveson.robertsharp.co.uk/F/chapter6/#para2-55>

¹¹⁹ Ofcom (2015a), paragraph 3.17

¹²⁰ For instance, Davies (2009) makes this case strongly.

improve the plurality situation, but to worsen it. We have cited some evidence from other contexts indicating that even senior figures at News Corp, including Rupert Murdoch, realise this is so. The causes of difficulty for commercial news providers are structural, inherent to the internet, and in many respects impossible to reverse. For instance, the privileged position of news producers in the supply of advertising is unlikely to return.¹²¹ Given the dependence of news producers – both newspaper and TV – on advertising throughout the 20th century across the developed world, this should be hugely alarming.

In the UK, Government decisions to cut public funding for publicly owned alternatives have exacerbated the problem. Those cuts have been supported by many commercial news providers. As far as both external and internal plurality in the production of news go, there are no reasons to expect them to improve in the future, or to be anything like sufficient in future. This is a major emerging public policy problem. There can, therefore, be no grounds for approving a merger of this nature which, as part 2 of this submission showed, would simply give the Murdochs a big increase in influence. In the next part, we argue the way the Murdochs seek and use influence makes them a much bigger threat to media plurality in the UK than other media owners.

¹²¹ Anderson et al (2012) stress this point.

4. Rupert Murdoch has a history of seeking political influence, and then using that influence to advance his commercial interests

In this part of the submission, we give a comprehensive account of the Murdochs' approach to political influence. We explain why, quite apart from the reduction in plurality that part 2 shows this acquisition would cause, or the future reductions in the plurality of news production that part 3 leads us to expect, there is already much evidence that Rupert Murdoch represents a *qualitatively greater* threat to media plurality in the UK than that posed by anyone else. In a sentence, Rupert Murdoch actively seeks to acquire political influence through media ownership which he can then use to advance his commercial interests, one of which is to acquire more media assets. Rupert Murdoch was a threat to media plurality in the UK in 2003, when the plurality public interest consideration was introduced into law, and he is still a threat now. His underlying approach has not changed in that time. Indeed, it has been remarkably consistent over many decades. As a result, there is a large amount of historical evidence that the CMA can look at to understand what is likely to happen if this acquisition is given clearance. Much of the analysis in this part addresses the list of 'qualitative contextual factors' Ofcom has said are integral to its plurality measurement framework.¹²² Some of the matters discussed in this part of our submission also have a bearing on the CMA's broadcasting standards review, which we address more fully in part 5.

Although we focus primarily on evidence relating to Rupert Murdoch, because his record is the longest, we point to evidence that James Murdoch's approach is in key respects very similar. In any event, it would be unacceptable to clear this bid on the basis of a hope that James Murdoch might turn out to behave differently to his father.¹²³ Nor would it be acceptable to approve this bid on the basis that statements have been made in the run-up to this bid implying that the Murdochs have changed their approach, or that, in James Murdoch's words in March, "*there has been no other firm so committed, in deeds, to increasing plurality across the markets we operate in.*"¹²⁴ We contend that, far from being committed to increasing plurality in the markets they operate in, the Murdochs seek to achieve unfair advantages over their competitors in the markets they operate in through the acquisition of too much influence over public opinion and the political process.

¹²² "a purely mechanistic approach to plurality measurement risks failing to capture important differences between news organisations and news sources...contextual factors are an integral, rather than a supplementary, part of the framework which helps to interpret the quantitative data...The importance of contextual factors arises from the fact that the operating environment can differ between news sources and news organisations." Ofcom (2015a), paragraph 3.15

¹²³ Not least because Rupert Murdoch remains in control of the MFT. It is also plausible that he will pass on his share of the family trust to whichever of his children he thinks most likely or best suited to follow his business approach.

¹²⁴ James Murdoch (2017). See also the infographic, "*The landscape has changed, we have changed.*" https://www.21cf.com/sites/default/files/uploaded/investors/the_media_landscape_has_changed.pdf

Our argument in this part is broken down into five steps. The first step is we give a general account of how Rupert Murdoch uses the news assets he controls. We argue he actively seeks to acquire influence over public opinion and the political process, which he then uses to advance his commercial interests. Where he succeeds, this increases his influence further. Aside from general competition policy, which is generally recognised to be insufficient to prevent threats to media plurality developing, the only real limits to this process of accumulating influence are: (a) cross-media ownership rules, (b) the counterweight provided by commercial and especially publicly-funded competitors, and (c) regulation for content standards that limits the scope for abuse of influence. All of these are vigorously opposed by Rupert Murdoch. In the remaining four steps, we demonstrate how Murdoch's general approach translates into four distinct areas. His approaches to:

- Media ownership
- Control over news production, editorial independence and internal plurality
- Regulation in general, and for content standards in particular
- Undertakings given to acquire more media assets

We then examine the undertakings previously offered by 21CF in this case, before turning to outline our concerns about the Murdochs' commitment to broadcasting standards in part 5. Throughout, we offer evidence of where James Murdoch appears to have the same approach as his father.

Rupert Murdoch uses news outlets to acquire influence over the political process, which he uses to advance his commercial interests

Throughout his career, Rupert Murdoch has sought to acquire influence over the political process by acquiring news outlets and ensuring that they are edited by people who share his views and can reliably anticipate what line he will want them to take on any given issue. By acquiring a number of different assets in the same country, and combined with the influence he has over the editorial process, he has come to wield significant political influence over the democratic life of three countries: Australia, the UK and the United States. In each of these countries, there is a cycle: Murdoch acquires news outlets in a country, offers his backing to politicians who support policies that will advantage his existing businesses or enable him to acquire new ones, and expands his influence further to a point where, even if it was possible for elected politicians to defy him successfully in the past without suffering large political costs, it becomes increasingly hard for them to do so. The chief political cost incurred is the hostility of his news outlets.

Rupert Murdoch appreciates the commercial value of the political influence news outlets he owns can give him so much that this famously ruthless businessman is often prepared to run those outlets at a loss. In short, Rupert Murdoch seeks to acquire precisely the excessive influence over public opinion and the political process that plurality policy aims to prevent one person or voice acquiring. Quite simply, he seeks to operate in a way that constitutes a standing threat to a well-functioning democracy.

In 1995, the *New Yorker* writer Ken Auletta once spent ten days in Murdoch's offices doing research for a profile of him. In a 2007 profile of Murdoch, he told how *"At least a couple of times each day, he talked on the phone with an editor in order to suggest a story based on something that he'd heard. This prompted me to ask, 'Of all the things in your business empire, what gives you the most pleasure?' 'Being involved with the editor of a paper in a day-to-day campaign,' he answered instantly. 'Trying to influence people.'"*¹²⁵ In *Flat Earth News* in 2009, Nick Davies, the reporter responsible for uncovering the phone hacking scandal, summed up how Murdoch operates clearly: *"First, and most important, he uses his media outlets to build alliances with politicians who, in return, will help him with his business. ... He uses his media outlets as tools to secure political favours, and he uses those political favours to advance his business. But his politics are never as big as his wallet. He collects politicians and then he dumps them, with profit as his guide."*¹²⁶ Murdoch may also like his outlets to echo his political views but, as Davies says, *"his politics are never as big as his wallet."* But because Murdoch's main business over his career has been news media, the distinction between his commercial strength and his political influence is blurred; in democratic countries, the common currency of both is influence over public opinion. In news, as in any other media market, commercial strength will always to a large extent be a function of broad reach and deep engagement, which, in the case of news, also equates to power over public opinion.

For Murdoch to have political influence in a democratic country that benefits his commercial interests, all that is necessary is for him to hold a number of influential news assets in that country, have strong control over their editorial direction, and have the fact of that control be known to politicians in that country. If that is the case, then those politicians will know that to support a policy position which Murdoch opposes, or which he might perceive as a threat to his commercial interests, or which even just fails to advance his commercial interests as much as it might, is to risk provoking the hostility of not just one of the news outlets he controls, but potentially all of them. Explicit threats need not necessarily be made. Indeed, Murdoch may not even need to ask politicians for favours. As Lord Justice Leveson said in the section of his Report assessing Murdoch:

¹²⁵ Ken Auletta, "Promises, Promises" 2 July 2007 <http://www.newyorker.com/magazine/2007/07/02/promises-promises-2>

¹²⁶ Davies (2009), p. 17-8

“Sometimes the very greatest power is exercised without having to ask, because to ask would be to state the blindingly obvious and thereby diminish the very power which is being displayed. Just as Mr Murdoch’s editors knew the basic ground-rules, so did politicians. The language of trades and deals is far too crude in this context. In their discussions with him, whether directly or by proxy, politicians knew that the prize was personal and political support in his mass circulation newspapers. The value or effect of such support may have been exaggerated, but it has been treated as having real political value nonetheless. Turning the tables round, as it were, Mr Murdoch was also well aware that political support was what his interlocutors were seeking. Equally, politicians were well aware that ‘taking on’ Mr Murdoch would be likely to lead to a rupture in support, a metaphorical declaration of war on his titles with the inevitable backlash that would follow. What might count as taking him on would have to be seen from Mr Murdoch’s point of view, and in the context of a continuing and complex relationship. Mr Murdoch knew this too. These factors, taken together, would be likely to lead to an appreciation of the consequences both of disturbing the status quo as regards the regulation of the press and, more broadly speaking, of adopting policies which would damage Mr Murdoch’s commercial interests. Politicians’ interests, in other words, would find themselves highly aligned with Mr Murdoch’s. Put in these terms, the influence exercised by Mr Murdoch is more about what did not happen than what did.”¹²⁷

We agree with Lord Justice Leveson that influence is not just a matter of securing beneficial policy changes, but of preventing ones which, though in the public interest, go against Rupert Murdoch’s commercial interests. In the cases of those media owners with the greatest power, explicit deal-making is unnecessary because politicians will take decisions promoting their interests in the hope of winning the support, or at least avoiding the hostility, of the media they control.

In order for the effective difference between his support and his hostility to be as big as possible, it is necessary for Murdoch to maximise his own control over the editorial position of his news assets, and to have minimal regulatory constraints on their ability to editorialise in any particular direction. The combined effect of maximum control in his hands, a minimum of external regulation, and his limited commitment to journalistic standards, is to maximise the difference between the kind of treatment his news outlets give to politicians who suit his commercial interests and agree with his views, and to those who go against either of them. Treatment at the hands of Murdoch-controlled news outlets can vary from character

assassination to hagiography depending largely on this.¹²⁸ Likewise, his political promiscuity usefully dangles the prospect of winning his backing to political parties of different stripes, encouraging politicians to compete for his backing, and so increases his bargaining power with each of them. Reliably backing the same party would not give him the same influence.

The upshot of this approach to managing his news assets is, the political rewards for politicians who support policies that advance his commercial interests are large, and the danger for politicians that do not is severe. Moreover, this approach is not confined to content explicitly labelled as opinion or editorial – it affects the news production process deeply. As Mario Cuomo put it in 1982, *"The New York Times is perhaps the single most credible newspaper in the world. But when they endorse you, you get one column on the editorial page. With Rupert, he turns the whole paper over to you."*¹²⁹

Because he wields such influence over his news outlets, it is not necessary to meet Rupert Murdoch in person to find out what direction he wants public policy, and especially media policy, to go in. Rupert Murdoch has himself said in the past that anyone interested in learning what his views are can simply read *The Sun*. There are many examples across decades. Some recent ones include:

- In July 2016, *The Sun* ran an editorial arguing that Channel 4 should be privatised.¹³⁰ In September 2016, an editorial argued the same.¹³¹ As did a

¹²⁸ For character assassination, look at the case of the Australian Labour Party, which wanted to introduced tougher media ownership rules after the 2013 federal election. In July 2013, long-time editor of the *New York Post*, Col Allan, was sent to supervise News Corp's coverage of the election. For what ensued, see: (i) Hobbs and McKnight (2016), (ii) The Monthly, "Murdoch's war on Labor" September 2013 <https://www.themonthly.com.au/issue/2013/september/1377957600/mungo-maccallum/murdoch-s-war-labor>, and (iii) The Monthly, "Why Rupert Murdoch Can't be Stopped" November 2013 <https://www.themonthly.com.au/issue/2013/november/1383224400/robert-manne/why-rupert-murdoch-can-t-be-stopped> "Col Allan's...most famous expertise is bare-knuckled political combat and character assassination. His most famous talent is for the brazen front-page banner headline. Allan arrived in Australia on 29 July, a week before the announcement of the date of the 2013 federal election. Almost instantly, News Corp's three most influential Australian tabloids – the Sydney Daily Telegraph, the Melbourne Herald Sun and the Brisbane Courier-Mail – began what looked to the outsider like a front-page headline competition for Allan's approval in what was by now News Corp's main game – to get Kevin Rudd."

For hagiography, see: (i) coverage of Donald Trump by Fox News: New York Magazine, "Rupert Murdoch Is Turning Fox News Into Trump TV" 5 January 2017 <http://nymag.com/daily/intelligencer/2017/01/rupert-murdoch-is-turning-fox-news-into-trump-tv.html>, and (ii) Michael Gove's interview with Trump for *The Times* - Trump's first foreign media interview. "They say Camp David is very nice," etc. <http://www.thetimes.co.uk/article/full-transcript-of-interview-with-donald-trump-5d39sr09d> Press Gazette, "Michael Gove defends Donald Trump interview tactics after claims he failed to challenge president-elect" 16 January 2017 <http://www.pressgazette.co.uk/michael-gove-defends-donald-trump-interview-tactics-after-claims-he-failed-to-challenge-president-elect/> The Irish Times, "Michael Gove's sycophantic interview with Donald Trump reeks of neediness" 16 January 2017 <http://www.irishtimes.com/opinion/michael-gove-s-sycophantic-interview-with-donald-trump-reeks-of-neediness-1.2939035> It later turned out that Murdoch himself sat in on the interview: The Guardian, "Rupert Murdoch was in room for Michael Gove's Donald Trump interview" 9 February 2017 <https://www.theguardian.com/media/2017/feb/09/rupert-murdoch-was-in-room-for-michael-goves-donald-trump-interview>

¹²⁹ The New York Times, "The Tasmanian Devil" 13 July 1982 <http://www.nytimes.com/1982/07/13/opinion/new-york-the-tasmanian-devil.html>

¹³⁰ https://www.thesun.co.uk/news/151_4044/terror-apps/ "Channel 4 could be worth £1billion to taxpayers. A tidy sum. Let's find a private buyer committed to funding real British TV and film talent — and sell it to them."

¹³¹ <https://www.thesun.co.uk/news/1779446/stealing-bake-off-from-bbc-was-just-crummy-c4/> "It plainly wants to compete aggressively like a commercial broadcaster — so the Government might as well now flog it to a real one. The estimated £1billion proceeds will be a tidy sum for the Treasury. And we could finally see the back of the sanctimonious leftie propaganda it calls news. That'll be the icing on the cake."

column by Kelvin MacKenzie.¹³² Were Channel 4 privatised, it would not be covered by any specific media ownership rules in UK legislation, and could therefore be bought by anybody, including Rupert Murdoch.

- *The Times* has taken a particular interest in the separation of Openreach from BT. BT is in competition with Sky in the pay-TV market, and its main rival in football rights auctions.¹³³
- As mentioned before, in the aftermath of the 2015 General Election and in the run-up to the BBC's Charter Renewal negotiations, *The Times* argued in an editorial that the BBC had 'imperial ambitions' in online news. It also consistently argued over the course of the BBC charter renewal process that the BBC must be shrunk.¹³⁴
- *The Times*'s investigation earlier this year of the placement of advertising on YouTube comes in the context of Rupert Murdoch's well-known and long-establish hostility to Google.¹³⁵ News Corp is also an investor in a rival digital ad network, AppNexus.¹³⁶

Whatever the merits of these stories and editorials, what is striking is that the pattern of consistency with Rupert Murdoch's expressed views and commercial interests. As we suggested in the introduction to this submission, one way of assessing whether a person has too much influence over the political process is to look for evidence that they wield influence over the political process which benefits their commercial interests. While editorials in his newspapers do not necessarily prove 'too much influence' on their own, they are one kind of evidence that he may have such influence.

¹³² <https://www.thesun.co.uk/news/1792234/how-all-stars-execs-and-tv-channels-have-their-fingers-in-the-bake-off-pie/> "I have never heard of the new Culture Secretary and have no idea how bright she is but this blatantly commercial action by C4 [buying The Great British Bake-Off] shows the network should be owned by shareholders, not taxpayers. Channel 4 would be worth £1billion and that could hire a lot of nurses and teachers. For me that would be the icing on the cake."

¹³³ <http://www.thetimes.co.uk/article/when-breaking-up-is-too-hard-to-do-f7d8krrm9> <http://www.thetimes.co.uk/article/need-for-speed-vpxpvkdjn> <http://www.thetimes.co.uk/article/broadband-hostage-vm3f8w3xx> <http://www.thetimes.co.uk/article/digital-drag-bwl9dwfzk> <http://www.thetimes.co.uk/article/scandal-of-britains-sluggish-broadband-8322hrrwqhl>

¹³⁴ <http://www.thetimes.co.uk/article/opportunity-knocked-sdqppblqq>

¹³⁵ See the quotes from both Murdoch and Robert Thomson in part 3 above.

¹³⁶ The Drum, "News Corp takes \$10m stake in AppNexus as part of a wider \$31m funding round for the adtech outfit" 28 September 2016 <http://www.thedrum.com/news/2016/09/28/news-corp-takes-10m-stake-appnexus-part-wider-31m-funding-round-the-adtech-outfit>

Approach to media ownership

Throughout his career, Rupert Murdoch has exhibited a consistent attitude towards media ownership: a marked preference for acquiring high-impact, politically influential media assets; strong opposition to media ownership rules that put limits on the concentration of influence; and strong hostility to publicly-funded media, which is a counterweight to his influence as well as a commercial rival.

Across his career, Rupert Murdoch has sought to set up or acquire news outlets with outsized political influence. *The Australian* was and still is Australia's only national newspaper, is based in Canberra (the seat of the Australian government) and has been loss-making for most of its existence. His acquisition of the *Times* and *Sunday Times* gave him UK newspapers with considerable political influence, including the 'paper of record', which has also lost money for most of the time he has owned it. As shown in part 3, the *Times* is particularly influential in setting the agenda of UK broadcast news. As Andrew Neil put it in 1996, "*Though it would grieve him to think so, he has become an old-fashioned Times proprietor of the type he used to sneer at, keeping the paper going at a loss for years because of the power and prestige it brings its owner.*"¹³⁷

In the US, Murdoch bought the *New York Post* in 1976, which, again, has been loss-making for most of its history. However, it gave him considerable influence over politics in New York City. When he came to try and enter the New York City cable market with Fox News in the late 1990s, the *Post* ran a campaign designed to intimidate Time Warner Cable into carrying Fox News. Prominent Republican politicians in New York City, including the then-mayor Rudy Giuliani, also applied pressure to TWC on Murdoch's behalf.¹³⁸

In 1995, Murdoch created the *Weekly Standard*, a very small-circulation, heavily loss-making neo-conservative opinion magazine. According to a *New York Times* report from 2003, "*Reader for reader, it may be the most influential publication in America,*" said Eric Alterman, a columnist for *The Nation* and author of "*What Liberal Media?*"... "*The magazine speaks directly to and for power. Anybody who wants to know what this administration is thinking and what they plan to do has to read this magazine.*"¹³⁹ In 2007, Murdoch paid \$5.6bn to acquire the larger-circulation, even more influential *Wall Street Journal*. News Corp later took a \$2.8bn write down on the acquisition.¹⁴⁰ Soon afterwards, in 2009, he sold the

¹³⁷ Neil (1996), p. 214

¹³⁸ The New York Times, "Time Warner Is Said to Agree to Carry Murdoch's Fox News" 23 July 1997 <http://www.nytimes.com/1997/07/23/nyregion/time-warner-is-said-to-agree-to-carry-murdoch-s-fox-news.html>

¹³⁹ The New York Times, "White House Listens When Weekly Speaks" 11 March 2003 <http://www.nytimes.com/2003/03/11/arts/white-house-listens-when-weekly-speaks.html>

¹⁴⁰ Reuters, "Dow Jones costs News Corp \$2.8bn in writedown" 6 February 2009 <http://www.reuters.com/article/newscorp/update-1-dow-jones-costs-news-corp-2-8-bln-in-writedown-idINN0646811420090206>

Weekly Standard.¹⁴¹

Murdoch has typically bought a variety of *types* of news outlet, which enables him to exercise political power in different ways. In each major territory he has sought out or built a tabloid with large circulation which gives him influence over elections (*The Sun* in the UK, the *New York Post* in the US, the *Herald Sun* and *Telegraph* in Australia), along with a quality newspaper or magazine which gives him the ability to influence elite opinion (the *Australian*, *The Times & Sunday Times*, the *Weekly Standard* and then the *Wall Street Journal*¹⁴²). He now also controls TV news outlets in the US (Fox News), Australia (Sky News Australia) and potentially the UK if this acquisition is approved.

Another marked feature of Murdoch's career has been his consistent and sometimes extreme hostility to politicians who have advocated stricter rules on media ownership, and support for politicians who have gone on to dismantle existing media ownership rules. For instance, in Australia, the Fraser Government passed the 1981 'Murdoch amendments' which allowed Murdoch to retain control of an Australian TV station despite having given up Australian residency and citizenship. In 1987, the Hawke-Keating government (backed by Murdoch newspapers) introduced cross-media ownership laws which allowed for a major increase in concentration of the Australian newspaper market. That market is now dominated by News Corp newspapers. There was further deregulation in 2007 to allow greater cross-media ownership by the Howard government, also supported by Murdoch newspapers.¹⁴³ When the Australian Labor party proposed a new media watchdog to improve journalistic standards and introduce a new public interest test for media mergers, News Corp newspapers campaigned vigorously against the party at the following federal election in 2013.¹⁴⁴

In the UK, Murdoch's newspapers campaigned strongly against the Labour party at the 1992 election. Labour had pledged in its manifesto to "*establish an urgent enquiry by the Monopolies and Mergers Commission into the concentration of media ownership.*" It also said, "*If the press fail to deal with abuses of individual privacy, we will implement the Calcutt Report's recommendations for statutory protection.*"¹⁴⁵ The beneficiary of these attacks on Labour was the Conservative leader John Major, who won the 1992 election. However, by the mid-1990s, Murdoch fell out with Major, who had introduced rules on foreign ownership of UK broadcasters (as well as over the EU, which he felt Major was insufficiently against).

¹⁴¹ Los Angeles Times, "News Corp. in talks to unload Weekly Standard to Anschutz" 9 June 2009 <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2009/06/news-corp-in-talks-to-sell-weekly-standard-to-anschutz.html>

¹⁴² Murdoch had previously created the *Weekly Standard*, an American neo-conservative opinion magazine which reportedly made large losses, but sold it in 2009.

¹⁴³ Harding-Smith (2011), table 2

¹⁴⁴ Hobbs and McKnight (2016)

¹⁴⁵ <http://www.politicsresources.net/area/uk/man/lab92.htm> See also The Leveson Report, Part I, Chapter 3, section 1.1 <http://leveson.robertsharp.co.uk/I/chapter3/#para1-1>

Meanwhile, the new Labour leader Tony Blair dropped the party's commitments to investigating the concentration of media ownership.

During the run-up to and passage of the 2003 Communications Act, News International lobbied the Labour Government heavily¹⁴⁶ and argued that there should be *no specific media ownership rules* and that competition policy was sufficient to prevent excessive concentrations.¹⁴⁷ In 2009, Murdoch reiterated his (longstanding) opposition to the US FCC's cross-media ownership rules: "*One example of outdated thinking is the FCC's cross-ownership rule that prevents people from owning, say, a television station and a newspaper in the same market.*"¹⁴⁸ These rules have, for example, stopped Murdoch from buying the *Los Angeles Times*.¹⁴⁹

Murdoch has also long been hostile to publicly funded broadcasters. As already stated, they are a counterweight to his influence over the political process as well as a competitor to his commercial TV channels. In his 1989 MacTaggart lecture, "Freedom in Broadcasting", he argued:

*"Much of what passes for quality on British television really is no more than a reflection of the values of the narrow elite which controls it and which has always thought that its tastes are synonymous with quality...But this public-service TV system has had, in my view, debilitating effects on British society, by producing a TV output which is so often obsessed with class, dominated by anti-commercial attitudes and with a tendency to hark back to the past."*¹⁵⁰

Tweets from more recently show the same attitude towards the BBC.¹⁵¹ James Murdoch has displayed a similarly consistent hostility to the BBC. In 2000, he said "*The things that stick out [in the UK] are a draconian regulatory regime and a subsidised, horrific - how shall I put it - evil taxation scheme, subsidising competitors with no accountability.*"¹⁵² In 2006, he claimed

¹⁴⁶ The Guardian, "Files show extent of Murdoch lobbying" 3 January 2005 <https://www.theguardian.com/politics/2005/jan/03/uk.freedomofinformation>

¹⁴⁷ <http://leveson.robertsharp.co.uk/l/chapter5/#para5-9>

¹⁴⁸ Rupert Murdoch (2009)

¹⁴⁹ New York Times, "F.C.C. Shift May Thwart a Murdoch Media Deal" 24 March 2013 <http://www.nytimes.com/2013/03/25/business/media/murdochs-appetite-for-los-angeles-times-may-depend-on-fcc-changes.html> Los Angeles Times, "Rupert Murdoch, other potential buyers eye L.A. Times" 19 October 2012 <http://articles.latimes.com/2012/oct/19/business/la-fi-ct-murdoch-newspapers-20121020>

¹⁵⁰ Rupert Murdoch (1989)

¹⁵¹ E.g. 7 October 2013: "BBC massive taxpayer funded mouthpiece for tiny circulation leftist Guardian. Meanwhile print media about to be gagged to protect toffs." See for more: <https://www.google.co.uk/search?q=site%3Atwitter.com%2Frupertmurdoch+bbc&og=site%3Atwitter.com%2Frupertmurdoch+bbc>

¹⁵² The Guardian, "Murdoch junior damns media regulation" 24 July 2000 <https://www.theguardian.com/media/2000/jul/24/newscorporation.mondaymediasection>

that “*The BBC, infamously fantasizes about creating a British Google - and wants the taxpayer to fund it. This is not public service, it's megalomania. Perhaps it is not a coincidence that the BBC has managed so far to escape any meaningful oversight by concocting a governance fudge that Thornton's would be proud of. Delusions of grandeur will flourish in the absence of proper accountability.*”¹⁵³ In 2009 he said, “*A heavily regulated environment with a large public sector crowds out the opportunity for profit, hinders the creation of new jobs, and dampens innovation in our sector. ... We must have a plurality of voices and they must be independent. Yet we have a system in which state-sponsored media – the BBC in particular – grow ever more dominant.*”¹⁵⁴

Rupert Murdoch’s views on publicly funded media are reflected in the stances taken by his news outlets around the world. In Australia, his newspapers are markedly hostile to the Australian Broadcasting Corporation (ABC), and routinely call for its funding to be cut.¹⁵⁵ In the UK, it has been much the same for decades: in the 1980s, his newspapers campaigned for the BBC to have to carry advertising.¹⁵⁶ Since then, they have consistently attacked the licence fee and called for it to be frozen or cut.¹⁵⁷ In the run-up to the most recent BBC charter review, they argued strongly that the BBC is too big and should be shrunk, including radically scaling back its provision of online news.

The Media Reform Coalition has found that ministerial records showed that “*News Corp bosses met with the Government 10 times in the year to March 2015*”¹⁵⁸ – eight of those meetings were with Rupert Murdoch. In the eight weeks between winning re-election in May 2015 and his imposing an unfavourable funding settlement on the BBC in early July, the then-chancellor George Osborne met twice with Rupert Murdoch and four times with News Corp executives, according to official ministerial records.¹⁵⁹ Osborne then imposed on the BBC real-terms cuts so severe that the Labour MP Paul Farrelly called the deal a “*drive-by shooting*”.¹⁶⁰ These cuts were not advertised by the Conservative party in the run-up to the election, echoing a similar sequence of events in Australia some months earlier: having explicitly promised in the run-up to the 2013 federal election not to cut the ABC’s funding if he

¹⁵³ The Telegraph, “Sky's Murdoch accuses BBC of 'megalomania'” 30 November 2006 <http://www.telegraph.co.uk/finance/2951563/Skys-Murdoch-accuses-BBC-of-megalomania.html>

¹⁵⁴ James Murdoch (2009)

¹⁵⁵ Anthony Loewenstein, “Attacks on public broadcasting have gone global. The ABC is no exception” 1 December 2014 <https://www.theguardian.com/commentisfree/2014/dec/01/attacks-on-public-broadcasting-have-gone-global-the-abc-is-no-exception>

¹⁵⁶ See O'Malley (1994)

¹⁵⁷ See Davies (2014), p. 225-6

¹⁵⁸ <http://www.mediareform.org.uk/blog/meeting-murdoch-news-corp-bosses-still-have-keys-to-the-back-door-of-government>

¹⁵⁹ The Guardian, “George Osborne met Rupert Murdoch twice before imposing BBC cuts” 18 December 2015 <https://www.theguardian.com/media/2015/dec/18/george-osborne-rupert-murdoch-bbc-cuts-news-corp>

¹⁶⁰ Paul Farrelly, “The BBC licence fee deal is a drive-by shooting” 7 July 2015 <https://www.theguardian.com/media/2015/jul/07/bbc-licence-fee-deal-john-whittingdale-george-osborne>

became Prime Minister, Liberal leader Tony Abbott then imposed cuts to its funding.¹⁶¹ Since both Rupert and James Murdoch have expressed a marked hostility to publicly funded broadcasting, and given the number of meetings with Murdoch and News Corp executives, it is not unreasonable to infer that the cuts to the BBC were made at least in part to please Rupert and James Murdoch.

Rupert and James Murdoch are also both deeply hostile to public subsidies for journalism. In 2009 Rupert Murdoch said:

“In my view, the growing drumbeat for government assistance for newspapers is as alarming as overregulation... The prospect of the U.S. government becoming directly involved in commercial journalism ought to be chilling for anyone who cares about freedom of speech. The Founding Fathers knew that the key to independence was to allow enterprises to prosper and serve as a counterweight to government power. It is precisely because newspapers make profits and do not depend on the government for their livelihood that they have the resources and wherewithal to hold the government accountable.”¹⁶²

In the same year, James Murdoch said:

“in this all-media marketplace, the expansion of state-sponsored journalism is a threat to the plurality and independence of news provision, which are so important for our democracy. ... No amount of governance in the form of committees, regulators, trusts or advisory bodies is truly sufficient as a guarantor of independence. In fact, they curb speech. On the contrary, independence is characterised by the absence of the apparatus of supervision and dependency. Independence of faction, industrial or political. Independence of subsidy, gift and patronage. Independence is sustained by true accountability – the accountability owed to customers. ... There is an inescapable conclusion that we must reach if we are to have a better society. The only reliable, durable, and perpetual guarantor of independence is profit.”¹⁶³

¹⁶¹ The Guardian, “Tony Abbott admits he broke ABC cuts promise and says ‘buck stops with me’” 1 December 2014 <https://www.theguardian.com/australia-news/2014/dec/01/tony-abbott-admits-he-broke-abc-cuts-promise-and-says-buck-stops-with-me>

¹⁶² Rupert Murdoch (2009)

¹⁶³ James Murdoch (2009). His lecture lauding the value of journalistic independence “characterised by the absence of the apparatus of supervision and dependency” and attacking regulators for “curbing speech” came the month after the first

Approach to news production

Rupert Murdoch has a long and marked history of strong editorial intervention in the news assets he controls. As explained already, this has an important commercial function: it allows him to effectively hold out the offer of backing, or threat of attacks, from his news outlets to politicians. Evidence of this approach comes from decades of reports.

In the late 1960s, the BBC interviewed Murdoch. He declared that he was unusual among newspaper proprietors for his editorial interventionism, believing this to be a virtue.¹⁶⁴ The BBC voiceover says, *“he takes an active part in what goes into his papers, even going into the composing room to supervise what’s in the page proofs for the next day’s edition”* (as footage of Murdoch doing the same is shown).¹⁶⁵ This approach has continued right through his career to the present day, as attested to by a number of concrete cases, and by the high turnover rate of Murdoch editors.

Often Murdoch’s interference will be most marked soon after an outlet is acquired, in order that its editorial direction be reshaped thoroughly to meet his approval. Once an editor is in place who can be relied upon to think like him, or to anticipate what he will want written, there is less need for active intervention. Given the large number of news outlets he owns, there is a practical need to ensure that his editors will anticipate what issues he will want covered and how. This has been identified as a key factor in determining which editors stay in his employment by a number of former Murdoch editors and employees:

David Yelland, editor of the *Sun* 1998-2003: *“All Murdoch editors, what they do is this: they go on a journey where they end up agreeing with everything Rupert says. But you don’t admit to yourself that you’re being influenced. Most Murdoch editors wake up in the morning, switch on the radio, hear that something has happened and think, What would Rupert think about this?’ It’s like a mantra inside your head. It’s like a prism. You look at the world through Rupert’s eyes.”*¹⁶⁶

Andrew Neil, editor of the *Sunday Times* 1983-1994: *“you would get periodic telephone calls, sometimes they would come fast and furious, at other times you would not hear from him at all, and, in every discussion you had with him, he let you know his views. On every major issue of the time and every major political personality or business personality, I knew what he thought and you knew, as an editor, that you did not have a freehold, you had a leasehold, as*

Guardian article reporting that News International had authorised a nearly £1m confidential settlement to Gordon Taylor for a phone hacking claim the previous year. The *Guardian*, “Murdoch papers paid £1m to gag phone-hacking victims” 8 July 2009 <https://www.theguardian.com/media/2009/jul/08/murdoch-papers-phone-hacking>

¹⁶⁴ Adam Curtis, BBC blog, 25 April 2012 <http://www.bbc.co.uk/blogs/adamcurtis/entries/0de4228e-6af1-35a4-be4d-648a7ea15290>

¹⁶⁵ Adam Curtis, BBC blog, second video. 0:55 onwards.

¹⁶⁶ Evening Standard, “David Yelland: ‘Rupert Murdoch is a closet liberal’” 29 March 2010 <http://www.standard.co.uk/lifestyle/david-yelland-rupert-murdoch-is-a-closet-liberal-6732847.html>

*editor, and that leasehold depended on accommodating his views in most cases, not all cases, and there were sometimes quite serious disagreements we had and I still survived as Editor. I have always said that to survive with Rupert Murdoch, indeed any proprietor, an editor has to be on the same planet. You do not necessarily have to be on the same continent or even in the same country all the time, but you have to be on the same planet, otherwise the relationship does not work...when I was there, the then Editor of The Sun would get daily telephone calls, daily telephone calls. I was lucky, I only got them once or twice a week, sometimes once a month, but Kelvin MacKenzie, when he was Editor, would have daily conversations, not to determine what the headline was going to be on the front page or exactly what it would be, but to make sure that on every major issue, and of course in those days The Sun was a far more influential newspaper in the politics of this land than it is now, it followed the Rupert Murdoch line. There is no question about that and it would be inconceivable, for example, at the next election for The Sun to say, "Vote Cameron" if Mr Murdoch's view was to vote Brown; I can assure you, The Sun would say, "Vote Brown".*¹⁶⁷

Bruce Dover, News Corp's director of business development in Asia, at a time when Rupert Murdoch was trying to break into the Chinese market: *"The thing about Murdoch is that he very rarely issued directives or instructions to his senior executives or editors. Instead, by way of discussion he would make known his personal viewpoint on a certain matter. What was expected in return, at least from those seeking tenure of any length in the Murdoch Empire, was a sort of 'anticipatory compliance'. One didn't need to be instructed about what to do, one simply knew what was in one's long-term interests."*¹⁶⁸

In 2007, when Rupert Murdoch's effort to take over the *Wall Street Journal* was at a fairly advanced stage, several of the newspaper's reporters wrote a profile of him, *"In Murdoch's Career, A Hand on the News"*. It provides a detailed history of his editorial interference, and the ways in which that interference has been aimed at protecting or advancing News Corp's commercial interests:

"At all newspapers, owners have a say in broad editorial direction. Mr. Murdoch has a long history of being unusually aggressive, reflecting his roots as an old-fashioned press baron. From his earliest days, like some other newspaper proprietors of the last century, he ran his companies with his hands directly on the daily product, peppering reporters and editors with suggestions and criticisms."

"Over the years, Mr. Murdoch and his lieutenants have raised hackles for their involvement in the company's news operations. Former top editors at two of his London papers, for example, say he ignored an independent board set up to protect them from his interference, and got involved directly in

¹⁶⁷ House of Lords Communications Committee (2008b), Q1651, Q 1657

¹⁶⁸ Dover (2009), p. 149

firings in the 1980s. In Australia, the former editor of one of his top papers complains that a News Corp. executive pushed him for critical coverage of pilots in a strike that was hurting a News Corp. airline investment. In China, former employees say Mr. Murdoch's representatives occasionally pushed reporters to do more upbeat stories, at a time when News Corp. was seeking government help to expand its reach there. The reporters there didn't listen and kept up their often critical coverage."

"At the start of his career, in the 1960s and 1970s, he was a fixture in his Australian newsrooms, offering both welcome and unwelcome advice to his reporters, pushing story angles, discussing political coverage and passing along tips. Such behavior wasn't deemed particularly unusual. Richard Farmer, a political correspondent who once worked for two of Mr. Murdoch's papers, says he could be a "bully" when pushing for a story, but was also known to back off when journalists pushed back.

*"Occasionally, he penned stories for his papers. In 1976, he wrote what he says was a "terrific scoop" for the Australian, News Corp.'s national paper, about an Iraqi loan scandal involving a former Australian prime minister, Gough Whitlam. His story carried the byline "a special correspondent," without his name. Mr. Murdoch says that among his sources was another politician who later became prime minister. The story sparked an uproar among Mr. Whitlam's supporters, who arranged a boycott of the paper that cost it thousands of readers. The lost circulation "took a long time to get back," Mr. Murdoch says."*¹⁶⁹

Below we provide more detail on some individual cases of marked editorial interference:

1. *The Australian*:

- 1.1 Adrian Deamer, editor of *The Australian* 1966-71: *"He [Rupert Murdoch] began to worry that he could not depend on Deamer any more...Deamer was too strong, too independent, a loose cannon, a journalist's editor, not a proprietor's editor...Murdoch increasingly felt that he needed men on whom he could rely – men whose judgement would not be different from his own. And thus over time he came more and more to appoint rather colourless editors who would not disturb the outposts of empire."*¹⁷⁰

¹⁶⁹ <https://www.wsj.com/articles/SB118100557923424501> See also The Atlantic, "Mr Murdoch Goes to War" July 2008 <https://www.theatlantic.com/magazine/archive/2008/07/mr-murdoch-goes-to-war/306867/>

¹⁷⁰ William Shawcross 1992, p. 160

- 1.2 In 1975, journalists working on the Murdoch-owned *Australian* went on strike in protest at the alteration of their copy. In 1981, Elwin Parry Jones on BBC Panorama said of *The Australian*, “critics now claim that the paper has lost its early integrity, and that Murdoch’s inability to stop interfering with his editors is responsible. There have been eight editors of *The Australian* of them in sixteen years...”¹⁷¹ (testimony from Adrian Deamer on Murdoch’s interference follows in the video).

2. The *New York Post*:

- 2.1 In the late 70s, “Murdoch was an active presence in the newsroom, writing and rewriting headlines, even answering telephones.” In the run-up to the 1977 New York mayoral election: “*The Post*, Murdoch told [Ed] Koch, was going to endorse him; the paper actually did much more than that, running the editorial on its front page and generating so much pro-Koch copy in the ensuing weeks that 50 *Post* reporters and editors signed a petition complaining about their tabloid’s biased coverage. Murdoch invited them to quit; twelve did.”¹⁷²
- 2.2 From the 2007 *Wall Street Journal* report: “In the beginning, when he first took over, he was there like almost every day,” says Michael J. Berlin, a reporter at the *Post* from 1966 to 1988. “He would go out to the composing room, his sleeves rolled up...trying to get more pizzazz into the paper.” Roger Wood, then the paper’s editor, says that whenever he went on vacation, Mr. Murdoch “would edit the paper.”¹⁷³

3. The *Times* and *Sunday Times*:

- 3.1 From the 2007 *Wall Street Journal* report: “In his autobiography, “*Sundry Times*,” Mr. [Frank] Giles [Sunday Times editor 1981-3] wrote that Mr. Murdoch ordered him in January 1982 to replace the paper’s magazine editor with an editor from the *News of the World*, an apparent violation of his promise not to dictate staffing changes. Mr. Giles says he reluctantly made the moves, pretending to the paper’s staff they were his idea. He says he didn’t appeal to the independent directors because he believed it

¹⁷¹ Adam Curtis, BBC blog, fifth video, 8:20 onwards

¹⁷² <http://nymag.com/nymetro/news/people/features/11673/index2.html>

¹⁷³ <https://www.wsj.com/articles/SB118100557923424501>

wouldn't have helped. Mr. Murdoch denies he ordered the change, saying, "Frank's gone nuts." Fred Emery, a former Times assistant editor, says Mr. Murdoch called him into his office in March 1982 and said he was considering firing Times editor Harold Evans. Mr. Emery says he reminded Mr. Murdoch of his promise that editors couldn't be fired without the independent directors' approval. "God, you don't take all that seriously, do you?" Mr. Murdoch answered, according to Mr. Emery. Mr. Emery says he replied: "Of course we do." According to Mr. Emery, Mr. Murdoch laughed and said, "Why wouldn't I give instructions to the Times when I give instructions to editors all around the world?" Mr. Evans was eventually forced out by Mr. Murdoch."¹⁷⁴

3.2 See also chapter eight of Nick Davies's *Flat Earth News*, "Insight into the *Sunday Times*": "for the sake of his [Murdoch's] business interests, he had forged an alliance with Margaret Thatcher; and in order to maintain that alliance, he imposed a right-wing framework on the paper, a framework which well suited the personal politics of the editor whom he then appointed, Andrew Neil."¹⁷⁵ See the rest of the chapter for the following deterioration of editorial standards.

3.3 Andrew Neil: see above, and also in his memoir *Full Disclosure* where he says, "There were occasions when The Sunday Times reflected very little of what its owner thought; but it did so enough of the time for us not to fall out...He did not expect to see his particular views immediately reflected in the next edition of the *Sunday Times* after one of our many talks, though he would not have objected if they had been. But he had a quiet, remorseless, sometimes threatening way of laying down the parameters within which you were expected to operate. Editors whose sole purpose is survival have to become adept at reading Rupert Murdoch: stray too far too often from his general outlook and you will be looking for a new job. It can be strangely oppressive, even when you agree with him: the man is never far from your mind. Rupert dominates the lives of all his senior executives."¹⁷⁶

4. The Sun:

¹⁷⁴ <https://www.wsj.com/articles/SB118100557923424501>

¹⁷⁵ Davies (2009), p. 302-3

¹⁷⁶ Neil (1996), p. 212-3

- 4.1 Rupert Murdoch told the Leveson Inquiry: *“If you want to judge my thinking, look at the Sun.”*¹⁷⁷ In his Report, Leveson commented: *“Rupert Murdoch accepted that The Sun broadly reflected his worldview. His editors would not need to ask him for his opinion on any particular topic; they would know his thinking on the issues of the day in general terms, and could work out what it would be likely to be in any specific instance. Some have likened this process to the workings or metaphorical radiations of the Sun King, but, in fact, it is no more than basic common sense. Editors at The Sun, and probably also the News of the World, could form a pretty good idea of what their proprietor wanted without having to ask. It follows from this that, for example, the position The Sun took in relation to Lord Kinnock’s personality and policies through the 1980s and right up to the general election of 1992 was consistent with Mr Murdoch’s assessment of the man, even if the proprietor did not necessarily encourage all his paper’s methods and rhetoric.”*¹⁷⁸
- 4.2 Andrew Neil, in his 1996 memoir *Full Disclosure*: *“If you want to know what Rupert Murdoch really thinks then read the Sun and the New York Post. His name is above the editorial of the Post as ‘Editor-in-Chief’; there are no names on the editorial page of the Sun but his is written in invisible ink – the Sun reflects what Rupert thinks on every major issue. ... Kelvin MacKenzie of the Sun endured almost daily ‘bollockings’ from the man he always referred to as ‘the boss’ – a steady stream of transatlantic vituperation and four-letter words was his regular diet for over twelve years”.* Neil goes on to describe how MacKenzie *“finally snapped”* and stood up to Murdoch in 1993, by threatening to resign: *“things were never quite the same again: the whipping-boy had finally stood up to the boss – and the boss was unsettled by it. Kelvin was soon moved from his beloved Sun to Sky Television early in 1994. My belief is that Kelvin’s revolt in 1993 led directly to that unhappy and short-lived transfer.”*¹⁷⁹
- 4.3 Rebekah Brooks, editor of the *News of the World* (2000-3), and *The Sun* (2003-9), told the Leveson Inquiry that she accepted the *Sun* reflected Rupert Murdoch’s views on the big points; that Rupert Murdoch was instrumental in her appointment as editor of

¹⁷⁷ The Leveson Inquiry (2012b), p. 36

¹⁷⁸ <http://leveson.robertsharp.co.uk/l/chapter8/#para2-8>

¹⁷⁹ Neil (1996), p. 215-7

the *Sun*; that while she was editor, Murdoch was in contact “*Very frequently. It wasn't a regular pattern. Sometimes every day...very frequently. Mainly when he wasn't in the country.*” She also indicated that the decision to endorse the Conservative party at the 2010 General Election was taken between June and September 2009 by herself along with Rupert and James Murdoch.¹⁸⁰

Recent events suggest that this interventionist approach shows no sign of abating. Since he owns so many news assets, it is necessarily hard for Rupert Murdoch to closely monitor all of them at one. However, he still has a habit of coming into the newsroom and personally supervising coverage of major news events. Elections, being known in advance, are particularly easy to supervise coverage of. Murdoch supervised his news outlets’ coverage of the:

1. Scottish Independence referendum 2014¹⁸¹
2. General Election 2015¹⁸²
3. EU withdrawal referendum 2016¹⁸³
4. US presidential election 2016¹⁸⁴

¹⁸⁰ The Leveson Inquiry (2012c), p. 12-3; 18-19; 51-5

¹⁸¹ The Independent, “Rupert Murdoch arrives in Scotland as speculation grows The Sun will declare for YES in Scottish Referendum” <http://www.independent.co.uk/news/uk/scottish-independence/scottish-independence-rupert-murdoch-could-play-kingmaker-with-scottish-sun-leaning-yes-9719375.html> The Conversation, “How Rupert Murdoch is sticking his oar into Scotland’s independence referendum” 10 September 2014 <http://theconversation.com/how-rupert-murdoch-is-sticking-his-oar-into-scotland-s-independence-referendum-31531> The Guardian, “Rupert Murdoch hints at support for Scottish independence” 10 September 2014 <https://www.theguardian.com/politics/2014/sep/10/rupert-murdoch-hints-support-scottish-independence> The Drum, “Rupert Murdoch arrives in Scotland as speculation grows The Sun will declare for YES in Scottish Referendum” 13 September 2014 <http://www.thedrum.com/news/2014/09/13/rupert-murdoch-arrives-scotland-speculation-grows-sun-will-declare-yes-scottish>

¹⁸² The Independent, “Rupert Murdoch berated Sun journalists for not doing enough to attack Ed Miliband and stop him winning the general election” 20 April 2015 <http://www.independent.co.uk/news/media/rupert-murdoch-berated-sun-journalists-for-not-doing-enough-to-attack-ed-miliband-10191005.html>

¹⁸³ Financial Times, “Murdoch & Sons: Lachlan, James and Rupert’s \$62bn empire” 26 January 2017 <https://www.ft.com/content/a530494c-e350-11e6-8405-9e5580d6e5fb>

“He was in *The Sun* newsroom on a near daily basis in the weeks leading up to the Brexit referendum and was often spotted in the office of the editor, Tony Gallagher. He has always taken a close interest in the layout, design and content of the paper and, in Gallagher, has someone who shares his view that Britain will be better off out of the EU. While *The Sun* backed Brexit, *The Times*, another News Corp paper, did not: Murdoch was decidedly unhappy about the editorial line it took and made his feelings known, according to another insider.”

¹⁸⁴ See the Financial Times again. See also New York Magazine, “Rupert Murdoch Is Turning Fox News Into Trump TV” 5 January 2017

All of these events took place after the 21CF/News Corp split. Since the Murdoch Family Trust's control over both companies is the same as it was over News Corporation before the split, there is no real reason to expect the interference to have abated. The fact that Rupert Murdoch is currently interim CEO of Fox News, which indicates that this record of editorial interference and control is not limited to newspaper assets. Indeed, as their circulation declines and influence wanes, there is every reason to believe that his interest will focus on his TV assets – Fox News and, if this merger is approved, *Sky News*.

As a result of his considerable interference in the editorial stances of the news assets he controls, those assets display a marked editorial uniformity. One of the fundamental objectives of plurality policy is, “ensuring there is a diversity in the viewpoints that are available and consumed, across and within media enterprises”. The extremely marked editorial uniformity and lack of internal plurality evident across Murdoch-controlled news assets is highly relevant to the CMA's plurality review. This uniformity has persisted across 21CF and News Corp since the split, and shows no sign of abating. The most infamous case of such uniformity was in 2003, when all 175 of News Corporation's newspapers around the world supported the Iraq War. Andrew Neil explained how he thought this had occurred to the House of Lords Communications Committee in 2008:

“I think it is interesting that the Murdoch empire was more united on Iraq than the Bush Administration. There were more discordant voices in the Bush Administration than there were in the Murdoch empire, and that is just the way he runs things. He picks the editors that will take the kind of view of these things that he has and these editors know what is expected of them when the big issues come and they fall into line. It may not even be a case of them doing something they have been told to do, and I suspect that the vast majority of his editors agreed with him on Iraq in the first place and that is why he chose them.”¹⁸⁵

In the UK, the *Times* and the *Sun* have backed the same political party at every one of the eight elections since 1983, except 1997 when the *Times* advised voters to back euro-sceptic candidates of all parties. As David Butler and Dennis Kavanagh said: *“For the first time since 1966, The Times did not endorse any party. ‘Principle not party’ was its theme. It advised readers to vote for Euro-sceptic candidates, supplying an election day guide to Euro-sceptical voting at constituency level. ... However, the editorials were out of tune with the opinions of the paper's most respect columnists. ... However, under reported pressure from*

<http://nymag.com/daily/intelligencer/2017/01/rupert-murdoch-is-turning-fox-news-into-trump-tv.html>

“He was even more hands-on at Fox News after Ailes was forced out last summer, stepping in as interim chief executive — a position he continues to hold — and leading the network through its coverage of the presidential election.”

¹⁸⁵ House of Lords Communications Committee (2008b), Q1677

*its proprietor, The Times also abandoned the Conservatives, leaving the Sunday Times as the only News International title to remain loyal.*¹⁸⁶ Butler and Kavanagh note that “In 1997, [Labour] added another Murdoch scalp: the best-selling News of the World, reportedly against the inclinations of its editor, Phil Hall.”¹⁸⁷ It is no response to this charge to say that the fact Murdoch’s titles have switched party allegiance demonstrates a variety of views – the crucial point is that his titles move in virtual lockstep, not that they are inconsistent over time. Murdoch’s readiness to change which political party or leader he backs encourages all sides to think they could win or lose the support of his titles, which encourages them to try and outbid each other for his support.

There are more recent examples: the News Corp-owned *Wall Street Journal*’s pro-Trump coverage since the 2016 presidential election has not only been in sync with that of 21CF’s *Fox News*, it has been deemed so pro-Trump that a number of *Wall Street Journal* journalists have left in the months since the election, and the editor-in-chief Gerard Baker convened a ‘town hall meeting’ with the paper’s journalists.¹⁸⁸ The New York Times reported:

“concerns among some — and certainly not all — members of the staff that the paper is tilting Mr. Trump’s way erupted anew two weeks ago when Mr. Baker wrote to editors asking them to avoid describing the countries affected by Mr. Trump’s immigration order as “majority Muslim,” which was in keeping with Mr. Trump’s talking points. After the outcry, Mr. Baker appeared to back off and scheduled Monday’s meeting, though he cited as its main purpose a discussion about the newsroom’s digital future.”

Several journalists have left the Journal since the election, including a deputy editor who had worked at the paper for 22 years,¹⁸⁹ a national security correspondent (“When asked why he was leaving in a meeting with Journal Washington bureau chief Paul Beckett, Barrett cited Baker’s pointed remarks, according to two reporters with direct knowledge of the incident.”¹⁹⁰), and the editorial features editor, who was forced out for not being pro-Trump: “According to two sources with direct knowledge of the situation, Lasswell was in effect phased out over a period of months from the paper. He took a book leave during the election following conflict with his boss Paul Gigot, the editorial page director, about the extent to

¹⁸⁶ David Butler and Dennis Kavanagh, *The British General Election of 1997*, p. 171

¹⁸⁷ Butler and Kavanagh, p. 172

¹⁸⁸ <https://www.nytimes.com/2017/02/12/business/media/rupert-murdoch-donald-trump-news-corporation.html>

¹⁸⁹ <http://www.politico.com/blogs/on-media/2017/02/the-wall-street-journals-deputy-editor-in-chief-jumps-to-the-new-york-times-234764>

¹⁹⁰ NPR, “Murdoch And Trump, An Alliance Of Mutual Interest” 14 March 2017 <http://www.npr.org/sections/thetwo-way/2017/03/14/520080606/murdoch-and-trump-an-alliance-of-mutual-interest>

which the page should run material sympathetic to Trump.”¹⁹¹ We recommend that the CMA interview some of the former *Wall Street Journal* employees who have recently left to get an understanding of the editorial changes underway at the title.

Meanwhile, *New York Magazine* has reported that “Rupert Murdoch is turning Fox News into Trump TV”:

“Rupert Murdoch moved swiftly and unexpectedly to fill the void opened up by Megyn Kelly’s departure for NBC. Thursday morning, Fox News announced Tucker Carlson is taking over Kelly’s 9 p.m. slot. ... Carlson’s promotion stunned many inside Fox, according to sources... Murdoch had personally made the decision to promote Carlson, two senior Fox staffers said. Murdoch is a big Carlson fan, according to sources... Carlson has a good relationship with Trump, and his show has been broadly in line with the Trumpian wing of the GOP. Whereas Kelly was all but blacklisted by Trump, Carlson scored more than a dozen interviews with Trump during the campaign. In recent weeks, his show has been sympathetic to Trump’s skepticism about the intelligence community’s claims that Russia hacked the DNC and intentionally meddled in the election... Carlson’s promotion is one sign of just how much Murdoch wants to appease Trump, Fox insiders say. Murdoch has been intent on forging a tight relationship with Trump since his victory, sources close to both men tell me. One longtime Murdoch confidante told me the two speak by phone at least three times per week. As I reported Tuesday, at Mar-a-Lago over the holidays Trump criticized Roger Ailes and lavished praise on Murdoch. And Murdoch has told Fox executives that Trump asked him to submit names for FCC commissioner. (A Trump spokesperson denied that.) Murdoch has allowed Sean Hannity to turn his 10 p.m. show into de facto infomercials for Trump.”¹⁹²

¹⁹¹ <https://www.theatlantic.com/politics/archive/2017/02/conflict-over-trump-forces-out-an-opinion-editor-at-the-wall-street-journal/516318/>

David Leonhardt, a columnist at the *New York Times*, reported: “Many staff members believe that the paper’s top editor, Gerard Baker, previously a feisty conservative commentator, is trying to Murdoch-ize the paper. “There is a systemic issue,” one reporter told me... Reporters and editors have become accustomed to the “shaving off the edges” of Trump-related stories, one said, especially in headlines and initial paragraphs... There is no shortage of troubling anecdotes: A revealing story about Trump’s white-supremacist support that never ran in print. A dearth of stories about climate change and frightened immigrants. An email from Baker encouraging the staff not to mention the Muslim makeup of the countries when describing Trump’s immigration ban (partly rescinded after BuzzFeed disclosed the email). Glowing stories about Trump — “astonishing,” one longtime editor said — by a reporter who once tweeted a photo of herself smiling with Trump on his jet.”

David Leonhardt, “The Struggle Inside The Wall Street Journal” 14 February 2017

<https://www.nytimes.com/2017/02/14/opinion/the-struggle-inside-the-wall-street-journal.html>

¹⁹² *New York Magazine*, “Rupert Murdoch Is Turning Fox News Into Trump TV” 5 January 2017 <http://nymag.com/daily/>

The *Wall Street Journal* and *Fox News* may be contained in separate companies, but because they both ultimately answer to the same controller, editorial uniformity obtains. Moreover, their editorial position is not simply conservative – it is *pro-Trump*. That is, Murdoch is ensuring they back a president who may reward him for that backing in the way previous presidents have.¹⁹³

Approach to regulation for content standards

In 2010, News Corp cited impartiality regulation as a factor likely to limit the degree of editorial interference in *Sky News*. In its 2010 public interest decision, Ofcom said, “*The requirement for “due impartiality” is not absolute and broadcasters have a degree of editorial discretion in the selection of the news agenda. We recognise that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it.*”¹⁹⁴ Ofcom found the same in its 2015 review of media ownership rules for the Secretary of State: “*The Ofcom Broadcasting Code (“the Code”) requires broadcasters to reflect alternative viewpoints on news items and on politically or industrially controversial or public policy issues in non-news programmes. However, the Code does not require broadcasters to cover particular issues. Therefore, broadcasters might be able to shape their editorial approach to news and current affairs by excluding stories and issues.*”¹⁹⁵ According to Ofcom, if the Murdochs get total control of *Sky News*, impartiality regulation will not prevent them gaining even more influence over the news agenda. Moreover, we would point out that news produced by UK broadcasters exclusively for consumption online is not regulated by the broadcasting code. This means *Sky News*’s output for online consumption is actually less regulated than that of the *Times* and the *Sun*, whose online output is regulated by IPSO.

We believe Ofcom should also look at the evidence of how Murdoch-controlled news outlets aimed at markets *not* regulated for impartiality are run. In the course of routine monitoring in November 2016, Ofcom investigated three episodes of Fox News’s Hannity programme from August 2016 and ruled that they severely breached UK impartiality regulation, displaying a market bias in favour of Donald Trump in the 2016 US presidential election: “*we considered that the [Hannity] programmes presented an overwhelmingly one-sided view (in support of Donald Trump) on a matter of major political controversy and major matter relating to current public policy, i.e. the policies and actions of the two principal candidates contesting the 2016*

intelligencer/2017/01/rupert-murdoch-is-turning-fox-news-into-trump-tv.html

¹⁹³ The New York Times, “*When a Pillar of the Fourth Estate Rests on a Trump-Murdoch Axis*” 12 February 2017 <https://www.nytimes.com/2017/02/12/business/media/rupert-murdoch-donald-trump-news-corporation.html> This article details some of the favours successive US Presidents have given Murdoch in return for his backing.

¹⁹⁴ Ofcom (2010), paragraph 1.41

¹⁹⁵ Ofcom (2015b), footnote 30

US Presidential Election."¹⁹⁶ This is consistent with the editorial bias at Fox News reported above, and with the reports about the *Wall Street Journal*. Clearly this evidence is also relevant to an assessment of 21CF's commitment to UK broadcasting standards. The recent record of *Sky News Australia*, which News Corp moved from 33% to 100% ownership of in December last year, is also worrying. According to BuzzFeed in July:

*"From 7pm Monday to Thursday the channel now airs five straight hours of predominantly right wing talk ... 'There's long been talk of the Foxification of Sky News,' [ABC Media Watch host Paul] Barry said last week. 'Since News Corp took full ownership in December it's been looking and sounding more and more like it's famous American counterpart, especially in the evenings, when its conservative commentators are often in furious agreement.'"*¹⁹⁷

A recent report in the *Daily Telegraph* suggests a similar direction of travel could already be being planned for the UK: *"Fox News, the Murdochs' US news channel, is seen as highly partisan. ... according to Sky executives, changes to Sky News that make it more similar to American news channels are already under way. Graham McWilliam, who until Christmas was deputy head of the channel, said in September: 'People like discussion, debate and opinion. I think we haven't had enough of that in the past and I don't think our rivals do enough of that. It's something that American news channels are better at.'"*¹⁹⁸ Perhaps this was in anticipation of what its new owners will want to do with the channel after the merger.

Both Rupert and James Murdoch have a well-established dislike of content regulation. Any regulatory constraints on how much their outlets can editorialise is a limit on the degree to which it can propagandize for or against a particular policy, party or politician, and therefore the degree to which a news outlet can give them influence over the political process. Well-funded, broadly-trusted, publicly-owned rivals are also a limit on their influence, not least because they limit the degradation of news standards that is possible in a given market, and the degree to which viewers will trust what is, often, basically propaganda. In his 2009 MacTaggart lecture, James Murdoch said:

"the amount of detailed content regulation in UK broadcasting is astonishing. Two or three times a month, Ofcom publishes a Broadcasting Bulletin – a recent version weighed in at 119 pages. Adjudications included judgments on whether it is fair to describe Middlesbrough as the worst place to live in the UK; and 20 pages on whether a BBC documentary on climate change was fair to two of the participants. Every year, roughly half-a-million words are being devoted to telling broadcasters what they can and cannot say. ... In

¹⁹⁶ Ofcom, "Broadcast and On Demand Bulletin 317" 21 November 2016, p. 23-49 https://www.ofcom.org.uk/data/assets/pdf_file/0023/94271/Issue-317.pdf

¹⁹⁷ BuzzFeed, "Australia's News Channel And What It Learned From Fox News" 9 July 2017 <https://www.buzzfeed.com/markdistefano/fox-news-down-under>

¹⁹⁸ Christopher Williams, "Fox looks to head off rising revolt over Sky bid" 14 January 2017 <http://www.telegraph.co.uk/business/2017/01/14/fox-looks-head-rising-revolt-sky-bid/>

addition, the system is concerned with imposing what it calls impartiality in broadcast news. It should hardly be necessary to point out that the mere selection of stories and their place in the running order is itself a process full of unacknowledged partiality. The effect of the system is not to curb bias – bias is present in all news media - but simply to disguise it. We should be honest about this: it is an impingement on freedom of speech and on the right of people to choose what kind of news to watch. How in an all-media marketplace can we justify this degree of control in one place and not in others?”¹⁹⁹

James Murdoch’s philosophy echoes Rupert Murdoch’s. In 2013, he said *“Many of the same people who appreciate that too much welfare can be bad for a single mother somehow believe that spending tax dollars on “industrial hubs” is an excellent investment. When we do these things, we undermine our case for free markets by conveying the impression that the benefits are only for the already rich, well-connected and politically powerful - that is why we must have a press free from government intervention and why government attempts to regulate the press in Australia and Britain have been ill-conceived.”*²⁰⁰

This philosophy is much in evidence in virtually every Murdoch speech.²⁰¹ Nick Davies has analysed its real underpinnings:

“...He’ll betray his own principles, he’ll embrace politicians for whom he has very little respect, just as long as they have the power to help the company get bigger. In practical terms, this comes down to a repeated demand to be freed from regulation. He and his senior journalists all sing from the same song sheet on the virtues of deregulated free markets, in the UK and the US and Australia, wherever Murdoch owns outlets: theirs is the world’s loudest voice calling for the state to be cut back to make way for private enterprise. They do this as though it were simply a point of political philosophy. Clearly, however, it is a matter of overwhelming commercial interest for a businessman who wants to expand, to beat competitors and to dominate the very markets whose freedom he so often proclaims. Democratic governments across the world create regulators to speak up for the public interest – to protect their markets against the power of dominant corporations, to stop them crushing the competition or setting unfair prices or otherwise abusing their position. Repeatedly Murdoch has had to find ways

¹⁹⁹ James Murdoch (2009)

²⁰⁰ The Australian, “Free market is a fair market: Murdoch” 5 April 2013 <http://www.theaustralian.com.au/business/media/push-to-regulate-press-ill-conceived-murdoch/news-story/70177400a9b3aaf859a45bd96049873d>

²⁰¹ See, for instance, Rupert Murdoch (1989).

to beat them, and to sideline the public interest in order to advance his own. Legal fences obstruct him – so he looks to friendly politicians to quietly open gates and wave him through.”²⁰²

Approach to undertakings

Rupert Murdoch also has a long history of making promises in order to conclude a deal which later he has broken. This history should make the CMA extremely sceptical of whether undertakings can solve the serious concerns raised by this acquisition. We would stress that how *Sky News* has been run until now is not a reliable guide to how it would be run by the Murdochs post-acquisition.

There are many examples of promises made by Rupert Murdoch to secure a deal which were broken soon after. In 1969, he assured the Carr family that he would continue to give them some say over the direction of the *News of the World*, but then marginalised them once he took it over.²⁰³ When he acquired a stake in London Weekend TV in 1970, he gave undertakings to the Independent Television Authority that he would not exercise executive power, but then did so.²⁰⁴ When he sought to acquire the *New York Post*, he assured its owner Dorothy Schiff that he would maintain its liberal editorial stance. When she sold the paper to him in 1976, she said: “*Rupert Murdoch is a man with a strong commitment to the spirit of independent, progressive journalism. I am confident he will carry on vigorously in the tradition I value so deeply.*” Murdoch said that the *Post* would continue to be a “*serious newspaper.*” He later told a reporter from the *Times* that “*the political policies [of the Post] will stay unchanged.*”²⁰⁵ None of these assurances turned out to be true.²⁰⁵

In 1979, Murdoch went before the Australian Broadcasting Tribunal in order to seek approval for his takeover of Channel Ten. There, he made several promises that were not kept. He promised to keep the channel exactly as it was, but within two weeks of gaining the Tribunal’s approval had removed the general manager and the chairman. He promised to keep his Australian passport, but renounced it six years later in order to acquire US citizenship and become eligible to own more than 25% of US TV assets. He also said he had no intention of acquiring Ten’s sister station in Melbourne, but then did so three months later.

²⁰² Davies (2014), p. 169-170

²⁰³ Chippindale and Horrie (199), p. 4-6

²⁰⁴ Tiffen (2014), p. 184

²⁰⁵ The Huffington Post, “When Rupert Bought the Post” 18 June 2007

http://www.huffingtonpost.com/marilyn-nissenson/when-rupert-bought-the-po_b_52687.html

In 1981, Murdoch gave legally binding undertakings to the Monopolies and Mergers Commission that he would not seek to interfere in the editorial decisions of the *Times* and *Sunday Times* if he was allowed to take them over. Lord Justice Leveson noted in his report that breaching such undertakings is a criminal offence.²⁰⁷ However, two editors of these titles have alleged he breached these undertakings. Harold Evans, who resigned as *Times* editor in 1982, alleges that Murdoch broke many of the guarantees made.²⁰⁸ Andrew Neil, former editor of the *Sunday Times*, has alleged that he was dismissed by Murdoch because of a conflict between a story Neil wanted to report on and Murdoch's business interests in Malaysia.²⁰⁹ If true, this would be a breach of the undertakings. In 2012, James Harding resigned as editor of the *Times* after being given informal 'indications' that News Corp leadership wanted him to do so. In his resignation speech to staff, Harding said, "*It has been made clear to me that News Corporation would like to appoint a new Editor of The Times. I have, therefore, agreed to stand down.*"²¹⁰

In 2007, the Bancroft family were given guarantees that Murdoch would maintain the editorial independent of the *Wall Street Journal* in 2007. According to Michael Wolff, Murdoch "*thought [the editorial oversight board he agreed to as a condition of buying the Wall Street Journal] was a joke. He thought the people who believed that he would take such a board seriously and honor its terms were a joke. Of course, he wouldn't be bound by his agreement! (And, indeed, he promptly cast it aside, supplanting the paper's editor, which he had expressly committed not to do.)*"²¹¹ The history of Rupert Murdoch's pre-takeover

²⁰⁶ Tiffen (2014), p. 185

²⁰⁷ <http://leveson.robertsharp.co.uk/l/chapter5/#para1-33>

²⁰⁸ Evans wrote in his memoir (1983, p. 489) that Murdoch "guaranteed that the editors would have control of the political policy of their newspapers; that they would have freedom within fixed annual budgets; that the editors would not be subject to instruction from either the proprietor or management on the selection and balance of news and opinion; that instructions to journalists would be given only by their editor; and that any future sale of the titles would require the agreement a majority of the independent national directors. In my year as editor of the *Times*, Murdoch broke all these guarantees."

²⁰⁹ House of Lords Communications Committee (2008b), Q1681

²¹⁰ The *Times*, "Full text of James Harding resignation speech" 12 December 2012 <http://www.thetimes.co.uk/article/full-text-of-james-harding-resignation-speech-tfhfkt0wqgb>

This came after Harding sought to lead the press industry's attempt to set up a new system of self-regulation in the wake of the Leveson Report. He had also insisted on the *Times* covering the phone hacking revelations fully. *New York Magazine* collated the evidence: "Last week, amid big changes at News Corp., the *Telegraph* hinted at Harding's departure and reported, "Sources claim that Mr. Murdoch was displeased by the way the *Times* newspaper covered the recent arrests of former News International executives, particularly in recent weeks." "When Harding finally found his voice over hacking *Times* was v critical of News International management. Wapping sources: Murdoch hated that," tweeted BBC correspondent Andrew Neil today. Murdoch biographer and media critic Michael Wolff added, "Times coverage of hacking has been sharpest of all Murdoch outlets. Reward for that is James Harding getting fired. Naturally." Joe Coscarelli, "Rupert Murdoch Pushes Out Editor Critical of Phone Hacking" 12 December 2012 <http://nymag.com/daily/intelligencer/2012/12/rupert-murdoch-pushes-out-times-of-london-editor.html>

²¹¹ Michael Wolff, "How Bad is News Corp?" 8 August 2011 <http://www.adweek.com/digital/how-bad-news-corp-133928/>

In 2008, *The Atlantic* magazine reported on what happened on the day Murdoch took over: "After some polite applause, Murdoch introduced Robert Thomson...who, as Murdoch put it, "will be the publisher, with the editors all reporting to him. Murdoch explained that Thomson... would have no "business responsibilities" as publisher, which meant that he

promises to protect editorial independence is given in detail in Ken Auletta's 2007 New Yorker essay, "*Promises, Promises*".²¹² The essay was written precisely to question how worthwhile any guarantees Murdoch might make to maintain the *Journal's* editorial independence were worth. See above for the pro-Trump direction the *Wall Street Journal* has taken since the election and the discontent this has reportedly caused in the newsroom.

In its report for the Secretary of State, Ofcom said of the Times Newspapers and Dow Jones undertakings, "*No evidence has been put to us that the commitments in either case were actually breached.*"²¹³ Yet the events described above clearly suggest that in both cases the commitments were, possibly multiple times. The CMA should gather evidence on these two cases in order to assess how likely it is that the Murdochs would abide by the spirit of any undertakings they might offer to secure the CMA's approval of this bid. The CMA could, for instance, interview James Harding to establish whether he was asked to resign by Rupert Murdoch in 2012. This would be a breach of the 1981 undertakings.

Undertakings in this case

We also contend that this history of broken promises leaves in serious doubt the credibility of the resolution passed by 21CF's board to protect *Sky News's* editorial independence. Such a resolution could have been passed at any point in the past. Instead, it was only passed in April of this year, at a time when 21CF may have believed it would be possible to secure the Secretary of State's approval for behavioural undertakings in lieu of reference to the CMA. A resolution of 21CF's board can be revoked by 21CF's board at any time. The resolution itself creates an 'independent' editorial board which would have the sole authority to appoint and remove the Head of *Sky News*. However the 'independent' board would in fact be comprised of members of a sub-committee of 21CF's board. Yet as we argued in part 2, there is no evidence of serious board-level challenge to the Murdochs over the history of their companies, despite the scandals and failures that have taken place.

The undertakings 21CF offered to Ofcom at phase 1 of this inquiry were similar to the resolution passed by 21CF. The majority of the board's members would be 'independent', but as Ofcom noted in its report, "*aside from the initial appointments to the Sky News Editorial Board which are made by the outgoing Sky independent directors, appointments are made by a sub-committee of the Fox Board. Further, we note that on an ongoing basis the Sky News Editorial Board will comprise only a majority of independent members.*"²¹⁴ Appointees

was the paper's de facto new editor. Thus crumbled, with Murdoch's first words as the new owner, the hopeful wall that had been erected with fanfare while the sale was going through to shield the paper's editorial content from the flamboyant magnate's meddling." The Atlantic, "Mr Murdoch Goes to War" July 2008 <https://www.theatlantic.com/magazine/archive/2008/07/mr-murdoch-goes-to-war/306867/>

²¹² Ken Auletta, "Promises, Promises" 2 July 2007 <http://www.newyorker.com/magazine/2007/07/02/promises-promises-2>

²¹³ Ofcom (2017a), paragraph 2.58

²¹⁴ Ofcom (2017a), paragraph 11.17

chosen by a sub-committee of 21CF's board are obviously not 'independent'. A requirement for a 'majority' of independent members could mean only one more 'independent' editorial board member than non-independent. Therefore, only one nominally 'independent' member would need to not actually be 'independent' of the Murdochs' influence for the Murdochs to effectively control the editorial board. That 21CF even offered undertakings this paper thin is more evidence that any undertakings they offer should be treated with extreme scepticism.

Summary

In part 4, we have given an account of how Rupert Murdoch seeks to acquire precisely the kind of influence over the democratic process that plurality policy is supposed to prevent. His approach to seeking influence is manifest in his approach to media ownership, to news production, and to regulations which may limit his ability to accumulate more influence, including undertakings given as a condition of acquiring more assets. This analysis should factor strongly in the CMA's plurality review plurality assessment, because of the core objectives of plurality policy, and because Ofcom's measurement framework explicitly lists a number of qualitative contextual factors that this evidence bears on substantially.

In the last two and a half years, a number of critical policy decisions that affect the Murdochs' commercial interests have been taken: whether to commence Section 40 of the Crime and Courts Act, whether to set up Part Two of the Leveson Inquiry, and renewal of the BBC's royal charter. In that time, News Corp, and Rupert Murdoch in particular, have enjoyed extensive access to Government ministers. We suggest that this hardly suggests a situation of sufficient plurality - indeed, it suggests there has not been as much change since Lord Justice Leveson as is sometimes believed.

However, we believe the evidence above also strongly suggests that both Rupert and James Murdoch are not – whatever they might say in the context of this transaction – genuinely committed to upholding UK broadcasting standards. Both Rupert and James Murdoch have, in the past, stated their ideological opposition to content regulation, and specifically Ofcom's broadcasting standards code. There could hardly be clearer evidence of their lack of commitment to broadcasting standards. We urge the CMA to judge this question from the decades of available evidence, which clearly shows a consistent approach that threatens both media plurality and broadcasting standards in the UK. We now turn to the latter.

5. The Murdochs lack a genuine commitment to broadcasting standards, and to good corporate governance and compliance in general

In its issues statement, the CMA has said it intends to look not only at 21CF's compliance with broadcasting standards rules, but also at journalistic standards at News Corp-owned newspapers, as well as "*applicable regulatory and corporate governance requirements more broadly*" at both companies.²¹⁵ We therefore detail four separate scandals at Murdoch-run companies which demonstrate a record of consistent failure to uphold standards of compliance and an ethical culture at their companies:

- Phone hacking and other wrongdoing at News International
- Sexual and racial harassment at Fox News
- Attempts to sabotage a competitor in the UK pay-TV market at NDS, a News Corp subsidiary sold in 2012
- Anti-competitive practices at News America Marketing, a News Corp subsidiary

In the first two cases, not only the scandals themselves, but the corporate response to them is extremely revealing. That response bears out our contention that the Murdochs are only moved to action when the concern of *others* about such failures could cost them commercially. Both cases demonstrate that their instinct is not to get to the bottom of what happened, and to ensure the high standards of corporate compliance and ethical behaviour they claim to seek, but to simply limit the commercial damage to their companies. Sometimes this means seeking to limit the public disclosure of failures they know to have occurred; sometimes it means seeking to limit the co-operation of their employees with investigators. These are extremely serious allegations. We believe that when the full evidence is examined, our explanation for their actions is the simplest and most plausible. Throughout this section, we recommend ways the CMA could gather evidence on each of these scandals. At the end of this section, we look at the Murdochs' attitude to broadcasting standards in particular.

²¹⁵ CMA (2017), section 60, p. 20

Phone hacking and other illegal and unethical news gathering methods at News International

There are two parts to the phone hacking scandal: first, the original phone hacking and other practices at News International between 2000-2007 and the cover-up between 2007-11. In both cases, with whom did ultimate responsibility lie? The Leveson Inquiry's terms of reference confined a full assessment of these questions to Part Two, which has still yet to take place. The second part the CMA must consider is News Corp's actions *since* the scandal broke in late 2010 and early 2011. What does that response say about the Murdochs' attitude to wrongdoing at their companies?

Phone hacking and the cover-up at News International, 2000-11

During at least the period 2000-2007, there was endemic phone hacking and other illegality at News Corp-owned newspapers in the UK. The section of the Leveson Report 'Some Practices at the *News of the World*' gives a good account of many of these practices.²¹⁶ It also describes the relentless commercial pressure that journalists there were under to get exclusive stories, and it was to that end that this practices were resorted to by journalists afraid that if they did not break the law for their company, they would lose their job. The commercial pressure they felt stemmed from the top of the company. James Murdoch's own testimony to Leveson was that he left legal issues largely for those lower down in NI to consider.²¹⁷ We contend that there are only two possible explanations for the Murdochs' behaviour: either they were oblivious to the legal and other risks inherent in their approach, or they were indifferent to those risks. In either case, the prevalence and persistence of bad practices at the *News of the World* reflects very badly on the Murdochs.

Between 2007-11, News International denied that hacking and other illegal news-gathering practices went beyond 'one rogue reporter', the *News of the World* royal correspondent Clive Goodman, who pleaded guilty to phone hacking in late 2006. However, from mid-2009 onwards, a string of reports in other newspapers, mostly the *Guardian* but later also the *New York Times*, undermined the credibility of this defence by pointing to large confidential settlements News International reached with other victims of phone hacking who were not associated with the royal family at all. These include Gordon Taylor, the former head of the FA, and Max Clifford, a celebrity agent and publicist. In December 2010, News International was forced to disclose internal documents in the course of civil litigation brought by phone

²¹⁶ The Leveson Report, Part F, Chapter 4 <http://leveson.robertsharp.co.uk/F/chapter4/>

²¹⁷ "News International was one of six sort of companies within the region, operating companies reporting to me at the time, and with respect to News International, you know, what I was really focused on through this period were, as I said before, the overall commercial strategy of the business. We were in the process of taking -- just the start of taking quite a lot of cost out of the business and restructuring a number of the departments and corporate structures within it, as well as developing, you know, the longer term strategy for the company with respect to its digital products and the like, and not having -- so I just hopefully can be helpful in just situating myself there. You know, the day-to-day management of the legal affairs, the court cases and things like that was something that the management -- the direct management of the company was dealing with." The Leveson Inquiry (2012f), p. 13

hacking victims which proved that the ‘one rogue reporter’ defence was false. However, the scandal only assumed crisis proportions for the company with the revelation in July 2011 that *News of the World* reporters had hacked into the phone of a murdered schoolgirl, Milly Dowler, in 2002.

The Milly Dowler revelations and the expanding scandal led the Coalition Government in 2011 to set up the two-part Leveson Inquiry. Its terms of reference included, “*To inquire into the extent of corporate governance and management failures at News International and other newspaper organisations, and the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International.*”²¹⁸ However, this could only be investigated in Part Two of the Inquiry, which could not proceed until all relevant criminal investigations and trials had concluded, which they did only in October 2016 with the conviction of former Sun and News of the World journalist Mazher Mahmood.²¹⁹

The Report of Part One of the Leveson Inquiry explained that it was constrained both in what it could investigate and in what it could say by the ongoing criminal investigations, trials and civil litigation:

*“The criminal investigations and the many civil actions brought against the NoTW in relation to phone hacking mean there is a vast fund of information about alleged illegal practices in the hands of both NI, the police and in the High Court. However, the ongoing criminal investigations mean that the Inquiry has not been able to delve into any of this evidence and has been constrained in the areas of questioning that might have been pursued with many of those who were employed by the NoTW.”*²²⁰

In his assessment of Rupert Murdoch, Leveson said:

“the Inquiry remains constrained by the ongoing criminal investigations, at least as regards those aspects of Mr Murdoch’s evidence which bore on Module One and the saga of phone hacking. Sir John Major made the point in evidence that what he considered to be the less than acceptable state of the culture, practices and ethics of the press is attributable to the acts and omissions of proprietors and editors. However, as I have already explained, this is the sort of issue that criminal proceedings rightly preclude the Inquiry from exploring, save in very general terms, not least because the only

²¹⁸ <http://webarchive.nationalarchives.gov.uk/20140122144942/http://www.levesoninquiry.org.uk/about/terms-of-reference/>

²¹⁹ For more on Leveson Part Two, see the House of Commons Library briefing, “Press regulation after Leveson - unfinished business?” 9 June 2017 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7576>

²²⁰ The Leveson Report, Part F, Chapter 4, Section 1.3 <http://leveson.robertsharp.co.uk/F/chapter4/#para1-3>

*conduit from the conduct of journalists to Mr Murdoch is the layers of editorial and other management that separated him from the news room floor none of whom could be asked about the matter. This means that there are clear limits on the basis of the evidence I have heard to what I can say about Mr Murdoch's leadership and his responsibility, if any, for this aspect of the culture, practices and ethics of the press."*²²¹

The CMA therefore should not infer anything from the lack of explicit criticism of Rupert Murdoch in Lord Justice Leveson's Report. His culpability for the failures at News International is a matter Leveson explicitly said he could not properly investigate or offer conclusions on. The same is true of James Murdoch's conduct as executive chairman of NI. For instance, on the issue of the conflicting testimony given by Tom Crone and Colin Myler on the one hand, and James Murdoch on the other, as to whether Murdoch was told the reasons for the £1m settlement being paid out to Gordon Taylor, Leveson said:

*"It is here that I must return to the Terms of Reference and to recognise that the detail of who knew what is properly part of Part 2 of this Inquiry not least because of the ongoing criminal investigation. Furthermore, the nature of the process of this part of the Inquiry has meant that, in relation to these extremely fact sensitive meetings, there has been insufficient opportunity for detailed cross examination of precisely what was said by whom to whom. In the circumstances, I do not seek to reach any conclusion about precisely what transpired at this meeting. For present purposes, it is sufficient to repeat that whoever's account is correct as to what happened on 10 June 2008, there was no subsequent analysis of the consequences in relation to oversight and internal governance."*²²²

Leveson did, however, feel able to reach a broad conclusion about News International's corporate response between 2006-8:

"In truth, at no stage, did anybody drill down into the facts to answer the myriad of questions that could have been asked and which could be encompassed by the all embracing question "what the hell was going on"? These questions included what Mr Mulcaire had been doing for such rewards and for whom?; what oversight had been exercised in relation to the use of his services?; why had Mr Goodman felt it justifiable to involve himself in phone hacking?; why had he argued that he should be able to return to

²²¹ The Leveson Report, Part I, Chapter 8, Section 2.2 <http://leveson.robertsharp.co.uk/l/chapter8/#para2-2>

employment and why was he being (or why had been) paid off. On any showing, these questions were there to be asked and simple denials should not have been considered sufficient. This suggests a cover up by somebody and at more than one level.”²²³

The failures at News International clearly bear materially on the CMA’s broadcasting standards inquiry. It stands as evidence of the Murdochs’ real attitude to corporate governance and regulatory compliance, and therefore of the likelihood that a company they control would be genuinely committed to ensuring Sky continues to meet UK broadcasting standards. The crucial barrier that Leveson faced in assessing the issue of the Murdochs’ personal knowledge - the ongoing criminal investigations, civil claims and trials - has been absent since October 2016 when the last criminal trial ended. But in any event, what precisely the Murdochs knew personally cannot absolve them from responsibility for the massive lack of commitment to media standards and corporate compliance.

News Corp’s response to the phone hacking scandal, 2011-now

When the scandal broke, the Murdochs were apologetic and promised that lessons would be learned and behaviour improved. Whether this pledge was sincere is easy for the CMA to evaluate: look at their response to the scandal after it broke. We contend that on close examination, the inadequacy of their response reveals that the pledge was not sincere. In support of this bid, 21CF produced an infographic headed “*The landscape has changed. We have changed.*”²²⁴ We believe they have not, and that the more recent evidence shows this.

Neither Ofcom nor Leveson has offered a full verdict on News Corp’s response to the scandal after it broke in mid-2011. By late 2012, when both Ofcom’s original ‘fit and proper’ decision on Sky and the Report of Part One of the Inquiry were published, investigations were still ongoing and News Corp was still co-operating fully with police. However, since then, the only assessment of News Corp’s behaviour has been Ofcom’s June ‘fit and proper’ decision on Sky. Yet in key areas, Ofcom’s ‘fit and proper’ decision earlier this year was badly flawed and is now the subject of a judicial review by Avaaz. In particular, its assessment of new facts that have emerged since late 2012 was completely inadequate. We would single out several areas of concern. In each, the lack of prior investigation means the CMA may have to gather fresh evidence.

Rupert Murdoch’s taped comments to Sun staff in March 2013. In March 2013, Rupert Murdoch privately addressed Sun journalists in London to reassure them in relation to the company’s co-operation with police; in July of that year, a secret recording of the meeting emerged. In it Murdoch:

²²⁴

https://www.21cf-offer-for-sky.com/media/1058/the-landscape-has-changed_v10_sjl_170323.pdf

- appeared to minimise the significance of illegal payments to public officials: *"But why are the police behaving in this way? It's the biggest inquiry ever, over next to nothing"*
- appeared to imply that he had known illegal payments had been going on at his newspapers: a Sun journalist tells him *"I'm pretty confident that the working practices that I've seen here are ones that I've inherited, rather than instigated,"* to which he replies, *"We're talking about payments for news tips from cops: that's been going on a hundred years. You didn't instigate it"*
- appeared to promise to re-hire any journalist found guilty of crimes: *"What you're asking is, what happens if some of you are proven guilty? What afterwards? I'm not allowed to promise you – I will promise you continued health support – but your jobs – I've got to be careful what comes out – but frankly, I won't say it, but just trust me."*
- reassured his journalists that the company had reduced its cooperation with police investigations: *"All I can say is, for the last several months, we have told, the MSC has told, and [redacted], who's a terrific lawyer, has told the police, has said, 'No, no, no – get a court order. Deal with that'"*²²⁵

Why did Rupert Murdoch assure Sun journalists in March 2013 that News Corp was reducing its co-operation with police? Why did he suggest that he knew illegal payments to police was an established practice at his UK newspapers? What do these suggest about his personal commitment to standards at his UK newspapers? Ofcom's 2017 'fit and proper' decision offered no analysis on any of these questions. Indeed, it offered no analysis of this evidence at all. Instead, it simply noted it had 'considered' the recording, in a footnote to the conclusion that *"No new material evidence directly touching on [James and Rupert Murdoch] has come to light since 2012."* We believe that for Ofcom not to even have *asked* Rupert Murdoch why he made these comments, or to explain its own view of what these comments were intended to achieve, is unacceptable.

News Corp's decision to re-hire Rebekah Brooks as News UK CEO. Why did News Corp decide to re-hire Rebekah Brooks in late 2015 despite her disastrous record, as editor of the *News of the World* and then the *Sun*, and as CEO of News International, of managing entities which engaged in industrial-scale criminality. The decision to re-hire Brooks to a company they control - indeed, to exactly the same job in which she performed so disastrously for them last time - would have been approved by Rupert and Lachlan Murdoch, as the co-chairmen of News Corp. Clearly it is one which James Murdoch could have

²²⁵ Channel 4 News, "Revealed: the Rupert Murdoch tape" 3 July 2013 <https://www.channel4.com/news/murdoch-rupert-tape-police-the-sun-journalists> The Guardian, "Rupert Murdoch tape: read extracts from the transcript", 4 July 2013 <https://www.theguardian.com/media/2013/jul/04/rupert-murdoch-tape-extracts-transcript>

advised them about given his experience of working with Brooks as her immediate superior at News International between 2009-11. The decision to re-hire her clearly speaks to the Murdochs' attitude to wrongdoing and to corporate governance failures at the companies they control.

There is evidence in the public domain that raises major questions about Brooks's behaviour in early 2010, a key period in the scandal when News International was still aggressively contesting claims that phone hacking went beyond 'one rogue reporter'. According to Tom Watson and Martin Hickman's book *Dial M For Murdoch*, Brooks personally negotiated a financial settlement and confidentiality agreement with the celebrity publicist Max Clifford in March 2010 after he sought to bring a phone hacking claim against NI.²²⁶ Given that the 'one rogue reporter' was the *News of the World's* royal correspondent, the fact that Clifford was bringing a claim would have obviously suggested to Brooks that another journalist had hacked Clifford's phone. Brooks therefore had strong evidence as early as March 2010 that the company's public defence might be false. Yet there is no evidence that she sought to investigate the matter further, or to change that defence after March 2010. James Murdoch's defence in 2011 was that it took until December 2010 for him to realise that the company's claims about 'one rogue reporter' were wrong. This means that from March to December that year - a period in which allegations were mounting - Brooks could have alerted him but did not.

Instead, we now know as a result of evidence disclosed in civil litigation against News Group Newspapers in December 2016 that between January to April 2010, Brooks repeatedly discussed the mass deletion of NI emails dating all the way up to January 2010 with James Murdoch and was, according to an email from NI's chief information officer to an in-house lawyer, "*adamant on Jan 10*". She had "*discussed it with [James Murdoch] who wants to draw a line under Wapping and pre-2010*".²²⁷

Rebekah Brooks has not only been hired back to the old job in which she performed so disastrously for the Murdochs. On resigning in 2011, she left NI with a payout of £10.8m. Her legal fees in the 2013-14 phone hacking trial were paid for by News Corp. It was over a year after her acquittal that News Corp decided to hire Brooks back to her old job, in September 2015. In that time, a general election took place the result of which made the establishment of Part Two of the Leveson Inquiry highly unlikely. Rupert Murdoch was reported to have told *Sun* staff during that election campaign that the future of the company was at stake.²²⁸

²²⁶ Watson and Hickman (2012), p. 107: "Clifford lunched Rebekah Brooks in London, and agreed a deal: News International would pay him £220,000 a year for three years and costs of £331,112 – a total of £991, 112 – in return for his silence, and for reopening the flow of exclusives". See also Davies (2014), p. 208-9

²²⁷ The Guardian, "James Murdoch involved in News International email deletion, court told" 5 December 2016 <https://www.theguardian.com/media/2016/dec/05/james-murdoch-involved-news-international-email-deletion-high-court-phone-hacking> Email deletion, which News International has always maintained was part of legitimate housekeeping, was on the "agenda of and/or discussed and approved by" Murdoch on at least six occasions between January and April 2010, according to written arguments submitted to the court by the claimants.

²²⁸ The Independent, "Rupert Murdoch berated Sun journalists for not doing enough to attack Ed Miliband and stop him winning the general election" 20 April 2015 <http://www.independent.co.uk/news/media/rupert-murdoch-berated-sun->

The lack of a full internal investigation at News UK since 2011. Ofcom's 2017 'fit and proper' decision does not ask whether News Corp launched an internal investigation into the extent of wrongdoing at the company in the aftermath of the scandal, and if so what became of it. When, in 2011, he was asked by the then-chair of the Culture, Media and Sport Committee, John Whittingdale, whether NI intended to launch an investigation, James Murdoch pointed to the company's co-operation with police but did not commit to News Corp holding its own internal investigation and publishing its own report.²²⁹ The company set up the Management Standards Committee (MSC) to manage that co-operation with police, but there is no publicly available evidence that the MSC conducted an adequate and complete investigation of its own. Mostly it seems to have handled evidence requests from police investigators. Moreover, there is some evidence that the MSC scaled back its co-operation with police over time (as Rupert Murdoch's taped comments to Sun staff suggest).

In mid-2012, the police informed News Corp that they were considering bringing a corporate prosecution against NI. At that point, the company's co-operation with police, which had hitherto been good, was reduced. According to Nick Davies, *"[Operation] Weeting detectives formally told the MSC that they were investigating the company – and the full co-operation with authorities stopped dead. Police concluded that the Murdoch camp had been handing over material on junior reporters in the hope that this would persuade them not to prosecute the company."*²³⁰ A year later in May 2013, *"the tension was continuing, with one very senior officer, Detective Chief Superintendent Gordon Briggs, telling the MSC 'the higher up the organization our investigation goes, the more you appear to withdraw co-operation'"*²³¹

journalists-for-not-doing-enough-to-attack-ed-miliband-10191005.html "A source said: "Rupert made it very clear he was unhappy with The Sun's coverage of the election. He basically said the future of the company was at stake and they need to get their act together.""

²²⁹ Culture Media and Sport Committee (2012), p.17, Q158. Whittingdale: "Have you carried out your own investigation since the discovery of this information to find out the extent of involvement in phone hacking in the News of the World?" James Murdoch: "We have established a group in the company, co-operating very closely with the police on their investigation. Their investigation is broad, with respect to journalistic practices, in particular journalistic practices at the News of the World, and the policy and direction that the company has given them is to co-operate fully and transparently with the police; to provide information and evidence that the company believes and they believe is relevant to those investigations, sometimes proactively, sometimes in response to those requests. Again, I think the very fact that the provision of the new information to the police in the first place when there was no police investigation ongoing that then led to, in part, the re-opening, or this new investigation being established can, I hope, be testament to some proactive action and transparency with respect to getting to the right place to find out the facts of what happened, understanding all the allegations that are coming in and moving forward to aid the police in successful completion of the important and serious work that they are doing."

²³⁰ He continues: "...Police began to see some of their request for information refused or delayed. Material which was handed over now was sometimes heavily redacted, leaving detectives to guess whether it was important. When they asked to see the final report of the MSC review of the Sun, they were told that it did not exist. Some senior officers found this hard to believe and concluded that, if this were true, it might be because News Corp had realized that such a report would be so damning that it would be better not to write it. Scotland Yard also believed that News Corp had changed the MSC's terms of reference so that their work no longer required them to follow clues into the higher reaches of the company. They were suspicious too that no material was ever handed over about suspect activity at the Sunday Times – the paper which had been so involved in the dark arts that they had hired a specialist, David Connnett, to handle them and put him on a freelance contract so that they could disown him if he got caught. Senior police speculated that the MSC had been given a particularly narrow brief for the title. One News Corp source says that, having checked Sun records for the previous ten years, they searched Sunday Times records for only three years, i.e. back to 2008, thus neatly avoiding the Connnett phase, which was from July 2003 to July 2005."

²³¹ Davies (2014), p. 379-80

The simple proof that the steps taken by News Corp in response to the scandal were inadequate is that new claims have continued to be brought against the company since, and employees have continued to be found guilty of crimes - in some cases many years afterwards. The new claims have related to both the *News of the World* and the *Sun*, some of which News UK has recently settled rather than having them proceed to the trial that was scheduled for this October. Ever since the scandal first broke, News UK has always denied that phone hacking took place at the *Sun* as well as the *News of the World*. Some of these claims involve employees who continued to be employed after the 2011 scandal, when an internal investigation might have uncovered their activities sooner. Mazher Mahmood, convicted in late 2016 of perverting the course of justice, is one such case.

In his Report, Lord Justice Leveson offered this view of News International's response to the original police investigation of Clive Goodman in 2006:

*"the approach taken by NI is far from what might be expected of a well-run corporation. Mr Clarke [the police officer leading the investigation] described a closing of ranks by NI and said that this was "unusual for a major company – where full co-operation would be the norm". An organisational culture that is founded on integrity and honesty would require not only full co-operation with law enforcement, but also a determination to expose behaviour that failed to comply with the law. That would normally be achieved through a thorough internal investigation of any allegation, unaffected by the legal constraints that the police might face, in order to ensure that any wrongdoing in the company was uncovered, stopped and dealt with appropriately. What happened at the NoTW in relation to voicemail interception in this context is particularly informative about the culture that pertained both within the corporate and editorial operations."*²³²

In its 2012 'fit and proper' decision, Ofcom said "*In light of the events which occurred in 2009 to 2010 [i.e. the mounting allegations against News International] we find it difficult to comprehend James Murdoch's lack of action, given his responsibility as chairman.*" We submit that this lack of action in response to major failures continued not just after December 2010, when the company had enough grounds to launch an investigation, but even after the Milly Dowler revelation in July 2011 made action unavoidable.

In summary, the question of why there was no internal investigation after the 2011 scandal, and of why the MSC's co-operation with police seems to have been scaled back in 2012 is important in determining whether the Murdochs have really changed their approach, or have done so in rhetoric only, and for assessing how heavily regulators should rely on assurances from the Murdochs that they now have a better approach to investigating wrongdoing.

There is no sign that Ofcom questioned James Murdoch about any of these events when it met him and his brother Lachlan during its ‘fit and proper’ inquiry this year. Although Ofcom submitted questions to 21CF for Rupert Murdoch to answer, it did not interview him personally, and what questions he was asked addressed only the recent Fox News sexual harassment scandal. So it seems that Ofcom asked neither James nor Rupert Murdoch about any of these events. Yet on any reasonable view, they are vital for assessing the genuineness of the Murdochs’ commitment to good governance because they speak to the Murdochs’ attitude to wrongdoing at their companies *after* the phone hacking scandal left the headlines, as expressed in their actual deeds rather than their public statements.

Whether the Murdochs are genuinely committed to good corporate governance, or merely concerned to create the appearance of it in the heat of a scandal, while a judicial inquiry into their company’s conduct is ongoing, or while seeking regulatory approval for an acquisition, is a question that we believe the CMA must make central to its inquiry. It clearly bears on the question of whether the Murdochs would be genuinely committed to broadcasting standards at Sky, because it speaks to whether they would adequately investigate any allegations of breaches of broadcasting standards that might occur during their ownership of the broadcaster. It requires that the CMA interview both Rupert and James Murdoch about these events, as well as other current and former NI employees and members of the MSC.

Ofcom’s 2017 ‘fit and proper’ decision emphasised that “*James Murdoch and Lachlan Murdoch have put themselves personally behind the new [corporate governance] arrangements*” at News Corporation that are designed to prevent a repeat of the phone hacking scandal and the cover-up at NI.²³³ How much confidence this inspires in the new arrangements depends on a judgement about how much the personal assurances of the Murdochs are worth. We contend that the harassment scandal at Fox News suggests they are not worth much.

Sexual and racial harassment at Fox News

In the middle of 2016, allegations began to emerge in the American news media that the head of Fox News, Roger Ailes, had sexually harassed women over a number of years, including employees of 21st Century Fox. The allegations broadened to include harassment by other senior executives at Fox News, including racial harassment. Other employees have been accused of complicity in covering up both the harassment and the settlements made in response to threatened lawsuits. There are also allegations that 21CF hid settlements on the company payroll to hide them from investors, and a federal investigation is ongoing into this matter.²³⁴ On the 19th of April, 21CF fired Bill O’Reilly from Fox News. The company told

²³³ Ofcom (2017b), paragraph 71

²³⁴ In March, Donald Trump fired the US attorney for the Southern District of Manhattan, whose office was conducting the investigation. See New York Magazine, “The Big Winner in Donald Trump’s Decision to Fire Preet Bharara Might Be Rupert Murdoch” 12 March 2017 <http://nymag.com/daily/intelligencer/2017/03/winner-in-trumps-decision-to-fire->

Ofcom during its ‘fit and proper’ inquiry that “*it had reason to be troubled by Mr O’Reilly’s conduct.*”²³⁵ Ofcom’s report does not say at what point 21CF decided that was the case.

A recent report in the *New York Times* claims that in February 2017 Rupert, James and Lachlan Murdoch decided to renew Bill O’Reilly’s contract with Fox News and increase his salary, despite their knowing that just the month before, O’Reilly had concluded a new settlement with a former Fox News legal analyst who alleged he sexually harassed her over many years.²³⁶ According to the report, the settlement was for \$32m. 21CF claims in the Murdochs’ defence that the company was told that the settlement had been made, but was not told its size.

In a meeting with Ofcom on 18 April (the day before O’Reilly was fired), lawyers for 21CF tried to argue that it was to O’Reilly’s credit that he settled the case personally. Ofcom rejected this and concluded that it remained “*concerned that Board members regarded Mr O’Reilly’s settling cases personally as somehow a point in his favour.*”²³⁷ Ofcom said that 21CF’s primary defence for why it did not fire O’Reilly earlier than 19 April was that, although “*it was already aware of multiple cases that had led to settlement when it renewed its contract with him in February 2017*”, Fox “*considered the evidence in these cases to be equivocal*”. Ofcom said it ‘accepted’ this explanation for its lack of action, but found the number of cases “*concerning*”.²³⁸

We contend that 21CF’s defence in this case is wholly inadequate, as is Ofcom’s analysis of 21CF’s actions. If 21CF was aware of a number of cases that had led to settlements in which the evidence was ‘equivocal’, did it launch an investigation of its own to determine whether there was any veracity to the claims, or to find out whether other women at 21CF could claim to have had similar experiences to those alleged? Were the (at least) six settlements involving O’Reilly not a deeply concerning pattern? Moreover, why did 21CF not insist on O’Reilly telling them the size of the settlement in January? Given the pattern established above, we believe the CMA cannot be certain, without investigating the matter for itself, that 21CF board members did not know the size of the settlement. Moreover, it was arguably in 21CF’s commercial interest not to try and learn the size of the settlement (which dwarfed the

[bharara-might-be-murdoch.html](#) “on Saturday Trump oversaw the firing of Preet Bharara, the U.S attorney for the Southern District of Manhattan, whose office is in the middle of a high-profile federal investigation of Fox News. The probe, according to sources, is looking at a number of potential crimes, including whether Fox News executives broke laws by allegedly obtaining journalists’ phone records or committed mail and wire fraud by hiding financial settlements paid to women who accused Roger Ailes of sexual harassment. Sources told me that prosecutors have been offering witnesses immunity to testify before a federal grand jury that’s already been impaneled. ... In November, Trump had promised Bharara he could remain in the job. But on Friday, he reversed course and requested Bharara’s resignation along with 45 other Obama-appointed U.S. attorneys. (Adding to the intrigue, Trump’s prosecutor purge came less than 24 hours after Sean Hannity said on Fox News that Trump should “purge” the Justice Department of Obama-appointed officials.)”

²³⁵ Ofcom (2017), paragraph 51

²³⁶ The New York Times, “O’Reilly Settled New Harassment Claim, Then Fox Renewed His Contract” 21 October 2017 <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>

²³⁷ Ofcom (2017b), paragraph 58

²³⁸ Ofcom (2017b), paragraph 57

highest made in cases involving Ailes - \$20m), since 21CF would surely have had to fire O'Reilly if it had known this information.

The *New York Times* report seems to show that the reason for the timing of Bill O'Reilly's firing was not that 21CF had discovered new reasons to be troubled by O'Reilly's conduct. Instead, it was that 21CF's chief legal counsel, Gerson Zweifach, advised the Murdochs that the federal investigation into 21CF was likely to uncover the existence of the January settlement made by O'Reilly, which would in turn likely mean the information becoming public. Again, the prospect of the concern of others at the revelations, and of their concern causing commercial and reputational damage to 21CF, seems to have been what prompted the Murdochs to dismiss O'Reilly.

NDS

NDS is now owned by Cisco, but until 2012 it was 80%-owned by News Corp. Its core business was to produce smartcards used to manage the subscriptions of digital TV customers. Serious allegations of hacking and sabotage have been levelled against NDS in various court cases since 2002. A Sky competitor, ITV Digital, has accused the company of hiring a computer hacker to obtain and then distribute the codes which essentially allowed subscribers to watch ITV Digital for free. Meanwhile, Sky's signal remained encrypted. ITV Digital eventually folded.

Similar allegations were made against NDS in 2002 by the French pay-TV company Canal Plus which sued News Corp. But the facts never emerged in court because News Corp bought the part of Canal Plus that made the allegations.

Another company, EchoStar (now Dish Network) sued NDS in America for "reverse engineering" its smartcards and then leaking the hacked information on the internet. While EchoStar won only \$1500 in statutory damages, the Federal Southern California District Court in 2008 found that NDS Group Americas, had violated the Federal Communications Act and the California Penal Code.

News Corp has maintained that it hired a hacker to keep track of and catch other hackers and pirates. The CMA should look into these allegations to establish what happened and whether there is a pattern of illegal, anti-competitive behaviour. It could interview Lee Gibling, the man who alleges he was paid by NDS to hack on their behalf; Simon Dore, the former chief technical officer for ITV Digital; or Ray Adams, the former head of security for NDS. It could also speak to the BBC Panorama team that found incriminating emails which formed the basis of its 2012 report on the company.

News America Marketing

News America Marketing (“NAM”) is a consumer goods marketing business wholly owned by News Corp. News Corp has paid out approximately \$936 million in settlements to settle a series of lawsuits against NAM. The lawsuits alleged illegal and anti-competitive business activities aiming to squeeze out competitors and establish a dominant position. If similar practices were used to undercut competition with other broadcasters and print media owners in the UK, that would directly threaten plurality and indirectly threaten broadcasting standards.

NAM creates and sells promotional opportunities for consumer goods, for example through coupon inserts found in newspapers, and in-store adverts on aisle displays and on shopping trolleys. Lawsuits against the company alleged an orchestrated scheme over more than a decade to force both retail chains and consumer goods companies into long-term exclusive contracts to suppress competitors’ access to market, in violation of U.S. federal and state antitrust laws. There are also alleged breaches of other laws through activities such as hacking competitors’ computers to obtain customer lists.

News Corp. settled for \$656 million with marketing competitors, one of which had previously obtained a \$300 million jury verdict against NAM. In 2016, News Corp. also settled for \$280 million in a class-action lawsuit brought by its clients, several major packaged goods brands. The total size of the settlements made exceeds those made during the phone hacking scandal.

The markets concerned were:

1. Newspaper/magazine inserts: The market for consumer goods manufacturers like Heinz to insert free-standing insert coupon booklets into newspapers, a market NAM allegedly came to control 55% of by 2009.
2. In-store displays: The market for consumer goods manufacturers to promote their products to shoppers in grocery stores, drugstores, mass retailers, home improvement stores and bargain stores throughout the United States, a market NAM allegedly came to control 90.5% of by 2009.

NAM was also accused of ‘unlawful tying’ by using its in-store monopoly to monopolise the coupon market, offering its clients large discounts from its regular in-store prices, but only if they exclusively purchased their coupons from NAM. NAM also allegedly made large up-front payments to supermarkets to guarantee they would deal exclusively with NAM. This exclusivity then enabled them to raise in-store promotion prices artificially, prompting allegations that NAM overcharged clients by as much as 40%. Competitors alleged this practice would lead to “tipping,” where smaller firms are forced to exit the market after losing

a critical mass of business. News Corp. internally acknowledged that it sought to build contractual barriers to make it difficult, if not impossible, for competitors to compete.

NAM was also accused of devious and illegal practices to squeeze out the competition. These included hacking into computers owned by competitors (such as Floorgraphics) to obtain customer lists, tearing down competitors' in-store signs and ads, and telling customers that promotions they had placed via competitors had failed to appear in the stores. NAM also misrepresented competitors' in-store advertising compliance rates as well as their financial capacity. The Chief Operating Officer of NAM, Paul Carlucci, threatened to fire any employee who did not support exclusive control by NAM of these markets. He was later promoted to CEO of NAM, in an apparent signal that he enjoyed the full support of News Corporation and the Murdoch Family Trust which controlled the business. The CMA could contact the competitors affected by these practices, such as Floorgraphics, and review the court records of the proceedings against NAM which led to the huge settlements described above. The CMA should also interview the Murdochs to establish what they knew when about these practices.

The Murdochs' attitude to broadcasting standards

The CMA must also assess the Murdochs' attitude to broadcasting standards. We have already demonstrated in part 4 that the Murdochs have a publicly-expressed, vehement opposition to regulation in general, and to regulation for content standards in particular, including Ofcom's broadcasting code. We contend that this opposition is motivated by a desire to have maximum latitude in the editorial line their news outlets can take, because that latitude increases their influence over politicians by widening the difference between how their friends and enemies are treated. This dynamic was summarised well by Lord Justice Leveson when he said that politicians who did not favour Rupert Murdoch's interests risked "*a metaphorical declaration of war on his titles with the inevitable backlash that would follow*".²³⁹ The knowledge that Murdoch news outlets can 'fight dirty' in that 'war' through biased and inaccurate reporting makes the Murdochs more intimidating. We contend that the Murdochs' opposition to the broadcasting code may really stem from a desire to enable outlets they control to editorialise strongly against their opponents without any constraints.

Ofcom's report for the Secretary of State reiterated that the broadcasting code cannot address editorial decision making around which stories to cover and to give priority to. It pointed out that influence, "*may take subtle forms which would not be picked up by the Broadcasting Code, for example through the selection or omission of particular news items*".²⁴⁰ Therefore even under the current regime, they could still use Sky News as an instrument of influence. Rupert Murdoch has effectively indicated that he would seek to do so in the

²³⁹ The Leveson Report, Part I, Chapter 8, Section 2.10

²⁴⁰ Ofcom (2017a), paragraph 8.39

past. In his 2006 remarks to the House of Lords Communications Committee, Murdoch said that he:

"believed that Sky News would be more popular if it were more like the Fox News Channel. Then it would be "a proper alternative to the BBC". One of the reasons that it is not a proper alternative to the BBC is that no broadcaster or journalist in the UK knows any different. Mr Murdoch stated that Sky News could become more like Fox without a change to the impartiality rules in the UK. For example Sky had not yet made the presentational progress that Fox News had. He stated that the only reason that Sky News was not more like Fox News was that "nobody at Sky listens to me"."²⁴¹

It is important to note that Murdoch was, in 2006, prepared to admit he has limited influence over Sky News. We submit that 21CF acquiring total control over Sky would change that situation, and he would be able to make it more like Fox News, as he said he wanted to.

Fox News is a highly profitable channel for 21CF. One analyst estimates it may contribute as much as a quarter of 21CF's operating income.²⁴² The CMA cannot rely on the assumption that if the Murdochs take over Sky News and make it more biased and less accurate, they will suffer commercially as a result. Moreover, having expanded their influence over the political process by acquiring Sky News, they could use that influence to push for a deregulation of broadcasting standards.

At the end of August, 21CF decided to stop broadcasting Fox News in the UK through the Sky platform. They did this, we contend, not for the unspecified 'commercial reasons' they claimed at the time, but because they know that Fox News regularly breaches UK broadcasting standards. It has, in the words of one reporter quoted earlier, become 'Trump TV', nakedly partisan in its support for President Trump. The likelihood of several impartiality breaches *during* the CMA's phase 2 inquiry was high, jeopardising their chances of securing approval for the acquisition. This explanation is altogether far more plausible than 21CF's, that it suddenly decided that broadcasting Fox News in the UK did not make commercial sense at a time that happened to coincide with it becoming evident that the Secretary of State was going to refer the bid to the CMA on broadcasting standards as well as plurality grounds.

²⁴¹ House of Lords Communications Committee (2008a), p. 119, paragraph 47

²⁴² Bloomberg, "Fox's Profit Machine Seen Sturdy Enough to Endure O'Reilly Exit" 20 April 2017 <https://www.bloomberg.com/news/articles/2017-04-20/o-reilly-s-exit-looks-like-a-non-factor-for-fox-s-profit-machine> "S&P Global Inc.'s Kagan research unit estimates that Fox News was responsible for about one-fourth of the company's 2016 operating income, which was \$6.6 billion."

It is, we contend, indicative that 21CF was content to broadcast a channel clearly in breach of UK broadcasting standards for years, and only took action when this looked likely to damage their chances of acquiring Sky. It is part of a consistent pattern of behaviour which indicates an unacceptable underlying attitude of the Murdochs: they only take meaningful steps to remedy serious ethical, regulatory and legal failures at their companies when doing so becomes necessary to protect their commercial interests. That point is often reached only when such failures become public knowledge, at which point it is the concern of *others* that motivates them to act: advertisers, customers, regulators, politicians.

Conclusion

There is a clear and consistent pattern at Murdoch-run companies. It is of relentless commercial pressure applied from the top, with limited interest in how legitimately the profits are made by employees lower down the organisation. The Leveson Report makes extremely plain that this was the cause of the practices employed by the *News of the World*. The other scandals we point to in different subsidiaries show this was by no means an isolated case.

The pattern is also of failures known about by senior executives but about which they failed to act until those failures became public knowledge. The Murdochs bear responsibility for the approach of executives at their subsidiaries because they appoint them. Their decision to re-hire Rebekah Brooks in 2015 shows how little they have really learnt, despite what they may say. Too often, their response to scandals at their companies seems to have been motivated more by a concern to limit the commercial damage than by an earnest desire to find out the full truth, right the wrongs and remove those employees responsible. Such an approach clearly throws into considerable doubt the genuineness of the Murdochs' commitment to high standards of corporate governance and compliance, irrespective of what new structures they may have put in place in response to these scandals. If the people in charge of running 21CF have a fundamentally unsound approach, structures which rely on them dealing appropriately with the problems escalated to them cannot be sufficient to alleviate these concerns. There is a clear and obvious risk that, should Sky fail to meet UK broadcasting standards once it is under 21CF's control, the Murdochs may not remedy the problem. The case of Fox News's availability in the UK illustrates all of this succinctly. It is obvious that they only acted once they realised that broadcasting that channel in the UK might endanger their bid to take over Sky.

However good Sky's corporate record may have been to date, the relevant evidence for CMA to consider is how wholly owned subsidiaries of 21CF and News Corp have been run, and how problems that have emerged at those subsidiaries have been dealt with by the Murdochs. This is the most appropriate way of establishing how Sky would be run by the Murdochs if this acquisition is approved. We believe the evidence shows that the Murdochs have consistently lacked a genuine commitment to rooting out wrongdoing at their companies, and lack a genuine commitment to upholding the high standards required of UK broadcasters.

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Appendix 1: Limits of Ofcom's share of references metric

In this appendix, we give some reasons to believe that Ofcom's quantitative methodology is likely to understate the true extent of consumption enjoyed by News International's news outlets and *Sky News*. Share of references is assessed through consumer surveys which ask consumers to list the sources they use for news 'nowadays', and then ask consumers which of a list of options best describes their frequency of use of those sources. Each frequency option is weighted and then the weighted uses are summed together. Each news source's share of that weighted total is then its 'share of references'.

1. Frequency of use is assessed but duration and intensity of engagement is not: Share of references weights sources based on frequency of use, but not duration or intensity of engagement in each case. Sitting in front of the TV evening news for an hour or reading a newspaper weighs the same in 'share of references' as a brief look at a website or listening to the radio in the car, despite the fact that the first two are likely to be much deeper and longer forms of engagement. Time spent with newspapers tends to be much greater than time spent with online sources, as recent research has shown.²⁴³ The average case of TV news consumption - watching a news bulletin or an episode of *Newsnight* - is likely to be longer and more in-depth than the average visit to Facebook or the Mail Online website. News Corp and Sky's combined share of time spent with news sources is therefore likely to be hugely understated by Ofcom's share of references metric.
2. Sky's share of radio: Ofcom's new method of measuring *Sky News* Radio is likely to lead to an undercounting of its share of references at the wholesale level. In 2015, Ofcom decided to revise its methodology for attributing share of references, counting radio news bulletins provided by Sky as instead provided by the retail provider using them where those bulletins are not the only source used by the retail provider. Ofcom said, "*When a retail provider is drawing on a third party for content as well as producing its own content we would consider it to be acting as the wholesale provider of the news source.*" The new framework does not apportion weights to the share provided by *Sky News* and the retail provider in each case – if *Sky News* is not the sole source, it is not counted. Ofcom's 2014 and 2015 news consumption reports show that this change halved Sky's share of references at the wholesale level (see chart below).

²⁴³ Thurman (2017)

Ofcom has gone from overcounting to systematically undercounting Sky's share of references at the wholesale level.

3. Recall bias: Ofcom says in its framework, "*We are aware that, as with any consumer research, there are limitations to this approach, such as the reliance on the recall of those surveyed.*"²⁴⁴ We agree, but would go further: in general, it seems reasonable to assume that the less used a news source is by a consumer, the more likely they are to be unable to recall using it. In this way, share of references may overstate the dominance of the most frequently used news sources in the UK, particularly those available across a range of platforms – in this case, the BBC. Much online news is consumed via digital intermediaries like Facebook and Twitter, where the consumer's ability to recall from which publisher the news they saw on social media came will be weaker.
4. Acceptability bias: in its submission to Ofcom's measurement framework consultation in 2015, 21CF argued that 'share of references' can only understate the degree of plurality of news consumption in the UK because consumers can forget having consumed something from a source but cannot remember consumption of a source that never took place.²⁴⁵ However, we submit that it is entirely possible that consumers may overstate the number of times they use a source other than their primary news source, particular if they do not wish to represent themselves as overly dependent on one news source to the person surveying them (Ofcom's surveys are conducted face-to-face). Consumers may also understate their use of sources which are not widely trusted. *The Sun* would fall into this category according to Ofcom's own impact measures.²⁴⁶ Acceptability bias could also lead to the extent of a source's reach being understated – i.e. some people might not want to admit that they get their news from a particular source. This may account for some of the disparity between minutes spent on *Mail Online* according to comScore, and its share of references online according to Ofcom. The same applies to the *Sun*.

²⁴⁴ Ofcom (2015a), paragraph 3.12

²⁴⁵ 21st Century Fox (2015), paragraph 2.4

²⁴⁶ Ofcom (2015c), Figure 9.6 shows that the Sun is rated as trustworthy by a smaller proportion of its readers than is the case for any other newspaper.

Appendix 2: Section of the Leveson Report on Rupert Murdoch

Part I, Chapter 8, Sections 2.1-13. For this section in HTML form, see: <http://leveson.robertsharp.co.uk/l/chapter8/#para2-1>

2.1 Those who are expecting a series of revelatory insights into the career and personality of Rupert Murdoch will be disappointed by what follows. I say this for at least two reasons. First, as those who have written biographies about him would no doubt explain, the time at the Inquiry's disposal to investigate Mr Murdoch's lengthy career was limited in comparison with the breadth and depth of exploration necessary for such a subject. There was considerable ground for Counsel to cover and, in addition to pursuing the wider interests of the Inquiry, it was important that Mr Murdoch was able to say what he wanted about the various issues that have cost his company so dear.

2.2 Second, the Inquiry remains constrained by the ongoing criminal investigations, at least as regards those aspects of Mr Murdoch's evidence which bore on Module One and the saga of phone hacking. Sir John Major made the point in evidence that what he considered to be the less than acceptable state of the culture, practices and ethics of the press is attributable to the acts and omissions of proprietors and editors.¹ However, as I have already explained, this is the sort of issue that criminal proceedings rightly preclude the Inquiry from exploring, save in very general terms, not least because the only conduit from the conduct of journalists to Mr Murdoch is the layers of editorial and other management that separated him from the news room floor none of whom could be asked about the matter. This means that there are clear limits on the basis of the evidence I have heard to what I can say about Mr Murdoch's leadership and his responsibility, if any, for this aspect of the culture, practices and ethics of the press.

2.3 There are no similar inhibitions operating on me in relation to those aspects of Mr Murdoch's evidence which covered Module Three issues, although I naturally bear in mind that an enormous amount of evidential ground had to be covered in a relatively compressed timescale. Furthermore, the events in question covered a 31 year period (the acquisition of The Times and its associated titles was in January 1981) and Rupert Murdoch was 81 years of age when he testified. Notwithstanding that he is plainly extremely astute, some allowances need to be made for the fact that, over a two day period, he was being asked to give wide- ranging evidence and being taken, in the course of that evidence, to documents which were numerous, complex and diverse. It is not necessarily unreasonable that he may not always have given direct answers to the questions posed, and was not always able to recall events. It is also necessary to reiterate that Mr Murdoch is the Chairman and CEO of a world-wide media empire, and however dear to his heart newspapers may be as a whole, or

The Sun newspaper in particular, his time has to be rationed and certain responsibilities delegated.

2.4 Mr Murdoch's relationships with various British Prime Ministers have been considered in depth above, and in this Chapter, I come to the heart of the matter. He denied on several occasions that he made any express deals with politicians, and the available evidence does not prove that he ever did. This, however, is not the end of the story.

2.5 This Report is not the place to comment on Mr Murdoch's undeniable business acumen. On any basis, I have absolutely no doubt that he is a newspaper man through and through, and that he has developed a serious and abiding interest in politics and current affairs. An iconoclast in a number of respects, and certainly not an establishment figure, Mr Murdoch's position (which may be as the most powerful newspaper magnate in the English-speaking world, or at least one of them), has brought him into contact with all the leading politicians inhabiting that environment, from Australia to the USA. It is inevitable that he should get on better with some than others, but it is also clear from the evidence that he is a man who enjoys political argument and debate with those who are at the centre of this universe.

2.6 If Mr Murdoch made no express deals with politicians within government, the question which arises is whether he made any implied deals or reached tacit understandings with those who engaged with him. In this regard it is necessary to define terms carefully because there is a clear danger of permitting a lack of precision in the question to suggest or indicate what the answer to it might be. Instead, it may be better simply to set out what inferences, if any, may reasonably be drawn from Mr Murdoch's conduct over the years.

2.7 All the politicians who gave evidence before the Inquiry said that Mr Murdoch exercised immense power and that this was almost palpable in their relations with him. Mr Blair spoke in terms of his acute awareness of the power that was associated with him. This is not to say that Mr Murdoch set out to wield power or that his personal manner was other than amicable and respectful in his dealings with politicians. But it is to say that he must have been aware of how he was being perceived by his interlocutors; to suggest otherwise would be to suggest that Mr Murdoch knows little about human nature and lacks basic insight, which could not, of course, be further from the truth.

2.8 Rupert Murdoch accepted that The Sun broadly reflected his worldview. His editors would not need to ask him for his opinion on any particular topic; they would know his thinking on the issues of the day in general terms, and could work out what it would be likely to be in any specific instance. Some have likened this process to the workings or metaphorical radiations of the Sun King, but, in fact, it is no more than basic common sense. Editors at The Sun, and probably also the News of the World, could form a pretty good idea of what their proprietor wanted without having to ask. It follows from this that, for example, the position The Sun took in relation to Lord Kinnock's personality and policies through the 1980s and right up to the general election of 1992 was consistent with Mr Murdoch's assessment of the man, even if the proprietor did not necessarily encourage all his paper's methods and rhetoric.

2.9 It is the 'without having to ask' which is especially important here. Sometimes the very greatest power is exercised without having to ask, because to ask would be to state the blindingly obvious and thereby diminish the very power which is being displayed. Just as Mr Murdoch's editors knew the basic ground-rules, so did politicians. The language of trades and deals is far too crude in this context. In their discussions with him, whether directly or by proxy, politicians knew that the prize was personal and political support in his mass circulation newspapers. The value or effect of such support may have been exaggerated, but it has been treated as having real political value nonetheless.

2.10 Turning the tables round, as it were, Mr Murdoch was also well aware that political support was what his interlocutors were seeking. Equally, politicians were well aware that 'taking on' Mr Murdoch would be likely to lead to a rupture in support, a metaphorical declaration of war on his titles with the inevitable backlash that would follow. What might count as taking him on would have to be seen from Mr Murdoch's point of view, and in the context of a continuing and complex relationship. Mr Murdoch knew this too.

2.11 These factors, taken together, would be likely to lead to an appreciation of the consequences both of disturbing the status quo as regards the regulation of the press and, more broadly speaking, of adopting policies which would damage Mr Murdoch's commercial interests. Politicians' interests, in other words, would find themselves highly aligned with Mr Murdoch's.

2.12 Put in these terms, the influence exercised by Mr Murdoch is more about what did not happen than what did. To reiterate: a case by case examination of the policies which were introduced over this long period fails to demonstrate that politicians compromised themselves or their policies to favour Mr Murdoch's business interests directly. Where a decision pleased Mr Murdoch, there would always be other public-policy reasons for it. At least one administration introduced many policies to which, by any stretch of the imagination, Mr Murdoch would not have been well disposed. But no government addressed the issue of press regulation, nor of concentration of ownership.

2.13 Another important factor is that Mr Murdoch fully understood the value of personal interactions, the value of the face-to-face meeting. His (self-invited) lunch with Baroness Thatcher on 4 January 1981 exemplifies this point in microcosm. Mr Murdoch was not necessarily expecting any favours from Baroness Thatcher but he was investing in her nonetheless, seeking to impress on her his personal qualities as a risk-seeking entrepreneur who shared political affiliations with the Prime Minister and, although he never made the argument explicitly, why he should be regarded as the favoured bidder for The Times. There is no evidence that Baroness Thatcher sought in turn to persuade her Secretary of State of Mr Murdoch's qualities, but had there been a conversation between the two of them Mr Murdoch had the comfort of knowing that he had taken the opportunity of advancing his own case. In any event, if the lunch had been known about at the time, that itself would have been significant. Suffice to say, Mr Murdoch well understands the value of 'less is more'.