

## **21ST CENTURY FOX/SKY MERGER INQUIRY**

### **Summary of hearing with Independent Directors of Sky plc held on 25 October 2017**

#### **Role of independent directors**

1. Martin Gilbert Deputy Chairman of the Sky plc Board and Andrew Sukawaty Senior Independent Director of Sky plc attended the hearing (the Independent Directors).
2. Both independent directors said that they have never worked for 21st Century Fox (Fox) or its subsidiaries, or for the News Corp Group or its subsidiaries. All directors have general duties relating to strategy, governance, compliance (which includes governance of compliance systems, financial compliance and controls) and succession planning. The independent directors act as an additional safeguard, to ensure an arm's length transaction for any deal or relationship between Sky and 21CF as its 39% shareholder in order to protect the interests of the remaining 61% shareholders.
3. The independent directors said that there were specific structures, rules and processes in place to ensure this additional function was undertaken and led by the independent directors. These included reviewing all contracts between Sky and Fox over £10 million to ensure that the contract was in the best interests of Sky and protected the interests of Sky's other shareholders.
4. The independent directors said that apart from the general duties already identified, there were also specific roles assigned to independent directors. These include membership of Board committees. The independent directors represented the majority on all committees of the Board. Martin Gilbert used to be Chairman of the Audit Committee, and remains a member of it. Andy Sukawaty is Chairman of the Corporate Governance & Nominations Committee.
5. The independent directors stated that as Deputy Chairman, Martin Gilbert communicated regularly with the Chief Executive Officer (CEO) of Sky and on occasion with the Chairman), for example meeting with him once or twice a year and prior to a board meeting or at a board dinner. The independent directors said that the precise frequency of communication between the CEO

and Chairman was not known, but they would speak between board meetings and a relationship and dialogue between Chairman and CEO was to be encouraged. The independent directors explained that their frequency of communication was not a matter for oversight by the independent directors because there were enough safeguards in place to ensure the interests of the shareholders were met.

6. The independent directors said that one of the board's key functions was succession planning for the Board, Chief Financial Officer and CEO. The Corporate Governance and Nominations Committee (which is Chaired by Mr Sukawaty and of which Mr Gilbert, one further independent director and the Chairman of Sky are members) has oversight of succession planning for the Board. Beyond Board appointments, Sky's wider succession planning is reviewed by the Remuneration Committee, which is comprised of three independent directors and reported to the Board. However, the Board (and its Committees) do not decide on appointments outside of Board appointments.
7. The independent directors said that the Board has a fairly informal communication structure without restriction on engagement with the CEO, which encouraged an open dialogue on issues.

### **Corporate governance processes**

8. The independent directors explained that Fox has no legal rights to its representation on Sky plc's Board. [✂]. The independent directors said that the number of Fox directors on the Board had reduced from 4 to 3 as part of changes made to reduce the size of the Board. The reason behind the appointments of Fox directors on the Board of Sky was their level of experience and expertise including on global media as well as providing valuable input and support for the business of Sky, as a large shareholder.
9. The independent directors said that Fox's presence through representatives on the Sky board helped to ensure a collaborative and communicative working relationship with Sky's largest shareholder.
10. The independent directors explained that there is no formal mechanism in place for the independent directors to discuss issues with the CEO of Sky. However, any concerns the two executive directors have regarding Sky's relationships with Fox are raised through the Audit Committee's oversight of transactions with Fox.
11. The independent directors said that the management team at Sky was generally responsible for balancing relationships with media content providers. There is also a push in Sky to create its own content.

12. The independent directors said that appropriate measures were in place to ensure confidentiality and certain members on the Board would excuse themselves during sensitive matters of discussion - [REDACTED]. A general feature of the board meetings would be separate discussion at the end of the meeting involving only the independent directors (which include the CEO and CFO). This would often involve transactions with Fox discussed at the Audit Committee.
13. The independent directors stated that the nomination of James Murdoch for reappointment as Chairman of Sky was based on Mr. Murdoch's unrivalled level of experience and expertise in global media. The nomination decision by the Board was unanimous.

### **Relationships with shareholders other than Fox**

14. The independent directors explained that Mr Gilbert and Mr Sukawaty, as the two senior independent directors, would meet with the large shareholders. Interactions with shareholders focus on issues of concern to shareholders outside of the business of Sky such as the appointment of the Chairman and the Transaction. [REDACTED]. Shareholder issues relating to the business of Sky are dealt with by the management.
15. The independent directors said that they would report the concerns of the shareholders to the Board such as concerns related to the reappointment of the Chairman.
16. [REDACTED].
17. The independent directors stated that James Murdoch has no executive or quasi-executive involvement in Sky. Other than as a director of Sky he has no involvement in strategy which stems from management. There was no communication between the independent directors and the other members of the Murdoch family other than during and in relation to the bid from Fox.
18. The independent directors said that members of the Murdoch family do not currently have any influence over the business of Sky other than through the board. The independent directors said that in their experience there had been no concerns raised at the board around undue influence from the members of the Murdoch family and if there were any such attempts these would be raised by management to the Board.
19. The independent directors stated that Sky benefited from access to content provided by Fox.

20. The independent directors said that [REDACTED]. There was no [material]<sup>1</sup> relationship between Sky and News Corp and in particular no [material]<sup>2</sup> cross-promotion relationship.
21. The independent directors said that Sky News has complete editorial independence without interference from the Board.

## **Views on Sky News**

22. The independent directors said that Sky News held a significant brand value to Sky, [REDACTED]. There was minimal input from independent directors with regards to the oversight of Sky News. It was dealt by the management and was rarely discussed by the CEO at Board meetings other than to the extent of regulatory matters or matters related to health and safety.
23. The independent directors said that Mr Gilbert had rarely met the Head of Sky News, or any other senior executives of Sky News. Mr Sukawaty had visited Sky News twice. The Board did not discuss and no reports were given on the strategy, content or programming of Sky News. Such matters were handled by management independently of the Board.
24. Mr Gilbert and Mr Sukawaty explained that they were aware of the Broadcasting Code, and that they had not had formal training in relation to the Broadcasting Code, and would rely on Sky's General Counsel for guidance as appropriate. The independent directors noted that significant incidents of non-compliance with the Broadcasting Code would be reported to the Board by Sky's General Counsel, and that Ofcom considers that Sky's compliance record to be good.
25. [REDACTED]
26. [REDACTED]

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<sup>1</sup> Clarification added by Sky following review of draft hearing summary.

<sup>2</sup> Clarification added by Sky following review of draft hearing summary.