



Supplementary Memo

To: Ms. Anne Lambert and the CMA Inquiry group

From: *Media Matters for America*

Date: 9 November 2017

Re: Proposed acquisition by 21st Century Fox of Sky PLC

Media Matters for America would like to bring the following developments and considerations to the CMA Inquiry group's attention to supplement evidence highlighted in our 24 October 2017 submission and the 27 October 2017 hearing for third party informants. These further demonstrate that:

1. There is an identifiable link between 21st Century Fox's (21C Fox) poor corporate governance and what is broadcast on the news outlets it owns, especially Fox News;
2. The Murdochs and their news outlets continue to exploit the lack of regulatory infrastructure regarding broadcast standards in the U.S. to meddle in politics;
3. The "news"/"non-news" distinction remains insufficient when assessing 21C Fox's commitment to broadcasting objectives;
4. The closure of Sky News is not an appropriate counterfactual to the merger.

Further evidence of identifiable link between corporate governance and broadcasting standards

Media Matters and other third party informants have highlighted notable examples of a demonstrable link between 21C Fox's corporate governance and what is broadcast by Fox News and other Murdoch-owned outlets. Here are other examples that we would like to bring to the Inquiry group's attention, and that we believe call into question 21C Fox's commitment to attaining broadcasting standards:

Fox News' sexual harassment epidemic manifests itself on network programmes

As noted in previous submissions and the hearing, there is an identifiable link between Fox News' widespread sexual harassment epidemic and what is broadcast on the network's programmes. The epidemic has undoubtedly been enabled by 21C Fox and the Murdochs themselves. As previously noted, a 21 October 2017 *New York Times* report revealed that then-Fox News host O'Reilly struck a \$32 million agreement with a 15-year network analyst, Lis Wiehl, last January to settle new sexual harassment allegations against him (the sixth known agreement made by O'Reilly or 21C Fox) and that 21C Fox knew about the allegations.¹ Furthermore, with this knowledge, 21C Fox tried to keep the case private and made sure that O'Reilly's contract was renewed.²

While the bidder boasts of having "more female talent on the air than any other network"³ and continues to plead ignorance about the precise details of settlements and other relevant cover-up attempts at the network -- James Murdoch claimed he didn't know the O'Reilly settlement cost until after the *Times* reported it⁴ -- Fox News' on-air and off-air treatment of female employees and coverage of allegations brought against the network explicitly demonstrate a larger culture of sexism. Here are a few snapshots:

- Fox News engaged in a broadcast cover-up of the latest O'Reilly revelations. In the nearly seven months between when the news first broke about O'Reilly's multiple multimillion-dollar settlements with several women over reports that he sexually harassed them⁵ and October 24, Fox News devoted only 20 minutes and 46 seconds to covering the revelations. In contrast, the network devoted over 12 hours of coverage to reports detailing a pattern of sexual harassment by film producer Harvey Weinstein in less than three weeks after they were initially published.⁶ More than 16 of the 20-some minutes Fox News spent covering

¹ Emily Steel and Michael S. Schmidt, "O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract," *The New York Times*, 21 October 2017, <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>

² *ibid*

³ Michael Calderone, "Murdoch fetes Ingraham -- Newsrooms grapple with harassment claims -- Halperin accused -- Brookings suspends Wieseltier -- Glor lands 'CBS Evening News' desk," *Politico Media*, 26 October 2017, <https://www.politico.com/media/tipsheets/morning-media/2017/10/26/murdoch-fetes-ingraham-newsroom-s-grapple-with-harassment-claims-brookings-suspends-wieseltier-glor-to-anchor-cbs-evening-news-yashar-profiled-001366>

⁴ "James Murdoch pleads ignorance, again. Will his failure kill his father's dream deal?" *Media Matters for America*, 26 October 2017, <https://www.mediamatters.org/blog/2017/10/26/James-Murdoch-pleads-ignorance-again-Will-his-failure-kill-his-fathers-dream-deal/218338>

⁵ Emily Steel and Michael S. Schmidt, "Bill O'Reilly Thrives at Fox News, Even Has Harassment Settlements Add Up," *The New York Times*, 1 April 2017, https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html?_r=2

⁶ "Fox News spent 12 hours over 3 weeks on Harvey Weinstein but just 20 seconds over 7 months on Bill O'Reilly," *Media Matters for America*, 25 October 2017, <https://www.mediamatters.org/blog/2017/10/25/fox-news-spent-12-hours-over-3-weeks-harvey-weinstein-just-20-minutes-over-7-months-bill-oreilly/218327>

O'Reilly's predatory behavior during that time appeared on Fox's media criticism show, *MediaBuzz*.⁷

- Women who have brought sexual harassment allegations against the network were targets of demeaning rhetoric and harassment on air before they filed complaints. A *Media Matters* review finds that Wiehl was subject to a steady stream of sexually suggestive on-air commentary from O'Reilly while serving as the co-host of his nationally syndicated radio show a decade ago.⁸ *The New York Times* reported that during a 2001 segment on his radio show, O'Reilly announced that Ms. Wiehl had landed a job at Fox News and said she owed him.⁹ Former Fox News host Gretchen Carlson -- who last year brought sexual harassment allegations against then-Fox News Chairman and CEO Roger Ailes, lifting the veil on the network's epidemic -- noted in her complaint that the harassment she experienced from male colleagues also happened on air, including from her co-host Steve Doocy.¹⁰
- Ousted predatory Fox hosts have also been welcomed back to Fox News' airwaves without disciplinary action from 21C Fox. As noted in *Media Matters'* submission to the CMA, despite being fired from the network in April 2017, O'Reilly was allowed to return to Fox News' airwaves in September for a softball interview with Sean Hannity about O'Reilly's new book.¹¹ This wasn't just a Hannity-coordinated affair. The day of the interview, Fox News aired at least one promotion for Hannity's O'Reilly interview in each hour of programming.¹² Since his ouster from the network, O'Reilly has appeared on Hannity's radio show four times and has used at least one of those appearances to attack the women who

⁷ *ibid*

⁸ "The worst of Bill O'Reilly's on-air denigration and harassment of Lis Wiehl," *Media Matters for America*, 23 October 2017, <https://www.mediamatters.org/research/2017/10/23/The-worst-of-Bill-OReillys-on-air-denigration-and-harassment-of-Lis-Wiehl/218301>

⁹ Emily Steel and Michael S. Schmidt, "O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract," *The New York Times*, 21 October 2017, <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>

¹⁰ Emily Crockett, "Anchor Gretchen Carlson files lawsuit alleging 'pervasive' sexual harassment at Fox News," *Vox*, 6 July 2016, <https://www.vox.com/2016/7/6/12107310/gretchen-carlson-lawsuit-sexual-harassment>

¹¹ "By bringing back Bill O'Reilly, Sean Hannity proves he's a reckless loose cannon," *Media Matters for America*, 25 September 2017, <https://www.mediamatters.org/blog/2017/09/25/bringing-back-bill-oreilly-sean-hannity-proves-hes-reckless-loose-cannon/218037>

¹² "Fox News goes all in promoting Bill O'Reilly's return to the network on *Hannity*," *Media Matters for America*, 26 September 2017, <https://www.mediamatters.org/blog/2017/09/26/fox-news-goes-all-promoting-bill-o-reilly-s-return-network-hannity/218052>

brought allegations against him.¹³

- Not only does Hannity continue to defend O'Reilly, but he is continuing his collaboration with the former prime-time host, seemingly with Fox News' consent or tacit approval. Hannity planned to host O'Reilly on his radio show 1 November 2017 -- which would have been the fifth time O'Reilly would have appeared on his show -- but the interview was canceled due to a supposed "breaking news" story.¹⁴ O'Reilly indicated that his appearance would be rescheduled.¹⁵ There has been no indication that the collaboration between Hannity and O'Reilly has ceased or been scuttled. If Fox executives were serious about fixing the network's toxic culture and dismantling the infrastructure that enables sexual harassment¹⁶, they would have prevented Hannity from giving O'Reilly a platform by now.
- As noted in the 27 October hearing, Fox News has held female employees to strict standards for how they should look on air, especially under Ailes' leadership. Female former Fox News employees have come forward in recent years to share their experiences in meeting these standards. Carlson confirmed that trousers "were not allowed" for co-hosts of *Fox & Friends*.¹⁷ Another former Fox employee noted that for female employees, wearing "your skirts short and your heels high" and wearing "lots of makeup" was the standard to follow.¹⁸ While Rupert Murdoch, who continues to be Fox News' acting CEO, has reportedly lifted Ailes' "pantsuit ban,"¹⁹ he promoted Suzanne Scott to president of programming despite her role enforcing the clothing and makeup standards for women and aiding the cover-up of sexual harassment allegations.²⁰

¹³ "After his \$32 million sexual harassment settlement was revealed, O'Reilly heads back to Hannity's radio show," *Media Matters for America*, 1 November 2017, <https://www.mediamatters.org/blog/2017/11/01/wake-his-32-million-sexual-harassment-settlement-being-revealed-o-reilly-heads-back-hannity-s-radio/218422>

¹⁴ *ibid*

¹⁵ <https://twitter.com/BillOReilly/status/925832740162949120>

¹⁶ "The infrastructure that enabled serial sexual harassment at Fox is still working," *Media Matters for America*, 23 October 2017, <https://www.mediamatters.org/blog/2017/10/23/infrastructure-enabled-serial-sexual-harassment-fox-still-working/218300>

¹⁷ "Former Fox Host Confirms That Network Doesn't Let Women Wear Pants On Air," *Media Matters for America*, 4 April 2017, <https://www.mediamatters.org/video/2017/04/04/former-fox-host-confirms-network-doesnt-let-women-wear-pants-air/215913>

¹⁸ Amanda Terkel, "Woman Who Worked At Fox News Says She Had To Wear Her 'Skirts Short' And Her 'Heels High'," *Huffington Post*, 8 July 2016, https://www.huffingtonpost.com/entry/diane-diamond-fox-news_us_577f0095e4b0344d514eb1d5

¹⁹ Gabriel Sherman, "Women Can Wear Pants on Fox News Now, But Not Much Else Has Changed," *New York magazine*, 14 May 2017, <http://nymag.com/daily/intelligencer/2017/05/rupert-murdoch-disaster-at-fox-news.html>

²⁰ Margaret Sullivan, "If you think Fox News is changing, Rupert Murdoch's internal memo shows it isn't. At all," *The Washington Post*, 2 May 2017, <https://www.washingtonpost.com/lifestyle/style/if-you-think-fox-news-is-changing-rupert-murdochs-internal>

In line with off-air treatment of female employees and direct on-air targeting of women who've brought allegations, sexism has run rampant on Fox News programmes for years.²¹ The network's sexist behavior has ranged from remarks on women's physical appearance to questions about female leaders' intelligence and emotional stability to trivialization of issues that disproportionately impact women, including pay equity.²²

Racial discrimination at Fox News manifests itself on the network's programmes

Just like Fox News' sexual harassment epidemic has had direct broadcasting implications, so has its racial discrimination problem -- and without disciplinary action from 21C Fox. In the last year, over a dozen former Fox News employees brought allegations of racial discrimination against the network, including former anchor Kelly Wright. According to a lawsuit, senior-level network employees were alleged to frequently ridicule "Black employees by mocking stereotyped speech"; force "Black employees to practice saying the words correctly in front of White employees"; ask employees, "Why are all Black men women-beaters?"; mock the Black Lives Matter movement; and refuse to allow one of the few black anchors at the network to appear on a prime-time show to discuss "racial reconciliation" in the U.S.²³ Alongside Fox News' treatment of race on its airwaves, these instances of employee mistreatment illuminate a direct link between poor corporate governance and broadcasting standards. Here are a few snapshots:

- Fox News hosts and executives have disproportionately marginalized the contributions of African-American employees to broadcast programmes. For example, Wright's suit against the network notes that O'Reilly refused to air positive stories about the African-American community that Wright proposed airing and that current network co-president Bill Shine "demonstrated an obsession with race when it comes to discussions with Mr. Wright, including regularly asking him, 'how do Black people react to you' and 'how do you think White viewers look at you?'"²⁴
- White American superiority and grievance have been core narratives on Fox News programmes for years, including O'Reilly's former show. Fox News hosts, contributors and their guests have pushed these narratives by regularly

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²¹ "Here's The Sexism Gretchen Carlson Experienced On *Fox & Friends*," *Media Matters for America*, 7 July 2016, <https://www.mediamatters.org/blog/2016/07/07/heres-sexism-gretchen-carlson-experienced-fox-friends/211414>

²² "70 Awful Displays Of Sexism On Fox News," *Media Matters for America*, 18 August 2015, <https://www.mediamatters.org/blog/2015/08/18/70-awful-displays-of-sexism-on-fox-news/204994>

²³ Lloyd Grove, "Inside Fox News' Explosive Racism Lawsuit," *The Daily Beast*, 26 April 2017, <https://www.thedailybeast.com/inside-fox-newss-explosive-racism-lawsuit>

²⁴ *ibid*

portraying African-Americans as “thugs,”²⁵; demonizing the Black Lives Matter movement²⁶; casting immigrants of color as illegal²⁷ and dangerous²⁸; failing to condemn neo-Nazism and white supremacist mobilization²⁹; claiming multiculturalism is a threat to national security³⁰; hyping the myth of white Americans being racially marginalized³¹; and downplaying the pervasiveness of racial discrimination in the U.S.³²

Fox News, other Murdoch-owned outlets continue to meddle in politics

Since the hearing, developments raised more questions about 21C Fox’s commitment to due impartiality and attaining broadcasting standards. Regarding Project Director Mr. Joel Bamford’s question during the 27 October hearing about the role of media in influencing political and policy outcomes, recent weeks have demonstrated that Fox News and other Murdoch-owned outlets are positioned to do more than just provide a specific political slant to news discussions. Exploiting the relative lack of regulatory

²⁵ “Fox’s Kevin Jackson: Mothers Of The Movement ‘Raise Thugs Who Try To Kill Cops’,” *Media Matters for America*, 28 July 2016, <https://www.mediamatters.org/video/2016/07/28/fox-s-kevin-jackson-mothers-movement-raise-thugs-who-try-kill-cops/211984>

²⁶ “O’Reilly: ‘Is There Any Difference’ Between Black Lives Matter Protesters And Nazis,” *Media Matters for America*, <https://www.mediamatters.org/video/2017/04/10/oreilly-there-any-difference-between-black-lives-matter-protestors-and-nazis/215983>

²⁷ “Fox News used ‘illegal immigrant’ or its variations over 10 times more than other cable networks,” *Media Matters for America*, 13 September 2017, <https://www.mediamatters.org/research/2017/09/13/cable-news-outlets-continue-use-slur-describe-undocumented-immigrants/217902>

²⁸ “How Fox News used violent gang MS-13 to demonize immigrants,” *Media Matters for America*, 28 July 2017, <https://www.mediamatters.org/research/2017/07/28/How-Fox-News-has-used-violent-gang-MS-13-to-demonize-immigrants/217438>

²⁹ “VIDEO: How Fox News is mainstreaming white supremacists and neo-Nazis,” *Media Matters for America*, 6 October 2017, <https://www.mediamatters.org/blog/2017/10/06/VIDEO-How-Fox-News-is-mainstreaming-white-supremacists-and-neo-Nazis/218147>

³⁰ “Nigel Farage: ‘There’s ‘a direct link’ between terrorism and number of people from different religions and cultures allowed in a country,” *Media Matters for America*, 17 August 2017, <https://www.mediamatters.org/video/2017/08/17/nigel-farage-theres-direct-link-between-terrorism-and-number-people-different-religions-and-cultures/217687>

³¹ “Six Times Bill O’Reilly Defended The ‘White Establishment’ Against ‘The Left’,” *Media Matters for America*, 21 December 2016, <https://www.mediamatters.org/blog/2016/12/21/six-times-bill-o-reilly-defended-white-people-against-left/214887>

³² “Fox & Friends is sympathetic to neo-Nazis marching but outraged over sports players kneeling,” *Media Matters for America*, 22 August 2017, <https://www.mediamatters.org/blog/2017/08/22/fox-friends-sympathetic-neo-nazis-marching-outraged-over-sports-players-kneeling/217726>

infrastructure related to broadcasting in the U.S. especially, they are oriented and encouraged to weaponise stories (however false or baseless) against leaders or groups they disagree with until a political or policy outcome is achieved.

Just as they attempted to do with the now-retracted false story about Seth Rich, Fox News aggressively leveraged another conspiracy-theory-laden story to distract attention from the ongoing investigation into President Trump's ties with Russia. Over the course of three weeks, network hosts and contributors led by Hannity hyped a report from *The Hill* to claim that Hillary Clinton is really to blame for collusion with Russia because she had approved the Russian nuclear energy agency's 2010 acquisition of Uranium One, a company with licenses to extract U.S. uranium. What Hannity deemed an "explosive" "bombshell" was in fact a widely debunked story that was the product of shoddy reporting and fabrications.³³

In a three-week period, Fox News spent nearly 12 hours discussing Uranium One, according to a *Media Matters* analysis.³⁴ President Trump himself seized on the story, responding directly to the network's coverage.³⁵ And Hannity's demand that Congress "do its job" in addressing the supposed issue³⁶ materialised within days when House Republicans launched an investigation into the deal.³⁷ Just weeks after the Uranium One story was revived and other stories emerged that were baselessly cast as indictments of Clinton's supposed "collusion" with Russia, the Murdoch-owned *Wall Street Journal* ran an editorial calling for the resignation of special counsel Robert Mueller, who is overseeing the ongoing investigation into Trump-Russia collusion, and a contributor op-ed urging a "blanket presidential pardon" to anyone involved.³⁸ Republicans on Capitol Hill followed suit.³⁹ Hannity, in particular, is now promoting a conspiracy theory that reporters were paid to report on opposition research

³³ "How Steve Bannon and Sean Hannity's ginned-up Hillary Clinton uranium story became a congressional investigation," *Media Matters for America*, 24 October 2017, <https://www.mediamatters.org/blog/2017/10/24/how-steve-bannon-and-sean-hannitys-ginned-hillary-clinton-uranium-story-became-congressional/218318>

³⁴ "Study: Fox spent nearly 12 hours pushing the Uranium One pseudoscandal over the last three weeks," *Media Matters for America*, 9 November 2017, <https://www.mediamatters.org/blog/2017/11/09/study-fox-spent-nearly-12-hours-pushing-uranium-one-pseudoscandal-over-last-three-weeks/218475>

³⁵ "How Trump helps *Fox & Friends* set the media agenda," *Media Matters for America*, 19 October 2017, <https://www.mediamatters.org/blog/2017/10/19/how-trump-helps-fox-friends-set-media-agenda/218266>

³⁶ "FBI uncovered Russian bribery plot before uranium deal," FoxNews.com, 17 October 2017, <http://www.foxnews.com/transcript/2017/10/17/fbi-uncovered-russian-bribery-plot-before-uranium-deal.html>

³⁷ Tierney Sneed, "Nunes Announces Probe With Gowdy Into Obama-Era Russian Uranium Deal," Talking Points Memo, 24 October 2017, <http://talkingpointsmemo.com/muckraker/nunes-gowdy-uranium-russia-probe>

³⁸ Jason Schwartz, "Murdoch-owned outlets bash Mueller, seemingly in unison," *Politico*, 30 October 2017, <https://www.politico.com/story/2017/10/30/murdoch-fox-mueller-trump-244333>

³⁹ Kyle Cheney, "Conservatives introduce measure demanding Mueller's resignation," *Politico*, 3 November 2017, <https://www.politico.com/story/2017/11/03/house-republicans-robert-mueller-resignation-244517>

commissioned by both Democrats and Republicans about President Trump's ties to Russia.⁴⁰

The posture and efforts of Fox News and other Murdoch-owned outlets to shape political outcomes is unsurprising given Rupert Murdoch's close advisory relationship with President Trump and his hiring of political operatives, including Roger Ailes, to oversee his news outlets.⁴¹ However, such behavior does not demonstrate a genuine commitment to attaining due impartiality standards in the U.K. And as illustrated in the case of the Seth Rich conspiracy theory, these outlets pursue the shameless weaponisation of baseless stories to advance a political agenda at all costs -- from undermining journalistic integrity to invading the privacy of the families of the deceased. We would like to reiterate our recommendation that the CMA ask the bidder to provide documentation regarding the status and efficacy of the internal investigation into the Seth Rich matter (findings that have not yet been made public).

Other examples of Murdoch-owned outlets, especially Fox News, meddling in politics at all costs can be found in our previous submissions and correspondence.

The “news”/“non-news” distinction remains insufficient when assessing 21C Fox's commitment to broadcasting standards

While Fox News is no longer broadcast in the U.K., Ofcom recently reported that two Fox News hosts, Hannity and Tucker Carlson, were found in breach of the Broadcasting Code.⁴² Categorising their programmes as “current affairs discussion” and “opinion and commentary” programmes, Ofcom ruled that both Hannity and Carlson were in violation of due impartiality standards in individual segments about President Trump's Muslim ban and the Manchester terror attack, respectively.⁴³

While Ofcom's assessments illuminate the need to continue investigation into the bidder's commitment to attaining broadcasting standards, it is important to note that in the past, the regulator has deemed other instances of Fox News hosts' reporting and commentary irrelevant for scrutiny under the Broadcasting Code, citing the supposed categorical distinction between “news” and “non-news” content and programming.

⁴⁰ “Hannity promotes fringe conspiracy theory that reporters were paid to report on Trump-Russia dossier,” Media Matters for America, 8 November 2017, <https://www.mediamatters.org/video/2017/11/08/hannity-promotes-fringe-conspiracy-theory-reporters-were-paid-report-trump-russia-dossier/218491>

⁴¹ Maggie Haberman and Glenn Thrush, “Trump Reaches Beyond West Wing for Counsel,” *The New York Times*, 22 April 2017, <https://www.nytimes.com/2017/04/22/us/politics/donald-trump-white-house.html>

⁴² “OFCOM BROADCAST AND ON DEMAND BULLETIN,” Ofcom, Issue number 341, 6 November 2017, https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf

⁴³ *ibid*

For example, despite the alleged political motivations behind the Seth Rich story, Fox News employees' acceptance of the spin, and 21C Fox's deafening silence in the face of its promotion, Ofcom expressed no concerns over the case because it allegedly "did not occur in a broadcasting standards context."⁴⁴ The programs *Fox & Friends* and *Hannity*, Ofcom wrote, do not constitute "news" programming and thus their coverage of the Rich story did not warrant investigation under existing code.⁴⁵ Both of these programs and their hosts posit themselves as sources of "news" and their viewers see them as such. Their promotion of a story as news and as a topic of discussion without evidence absolutely warrants further review in the context of the broadcasting code -- as does the process by which the FoxNews.com story made the jump to the network's airwaves.

As noted in our submission, while the structures of morning, daytime, and prime-time programming vary, the line separating opinion and news programming at the network is a convenient fiction that viewers are unaware of and showrunners ignore. This has been a reality since the network's launch in 1994.⁴⁶ Given Fox News' claim to be a source of news across all of its programming and Rupert Murdoch's expressed desire for Sky News to become more like Fox News,⁴⁷ all of Fox News should be held to the standards of due impartiality and due accuracy.

The 6 November 2017 Ofcom report also indicated that the regulator looked into but ultimately declined to investigate three *Fox & Friends* segments on due accuracy, due impartiality, and offensive material grounds.⁴⁸ We recommend that the Inquiry group seek information about the content of these segments and why they were not investigated further. A catalogue of hundreds of other potential breaches from the last year (and previous years) can be found on *Media Matters'* website⁴⁹ by Fox News show, including *Fox & Friends*⁵⁰, *Tucker Carlson Tonight*⁵¹, and *Hannity*.⁵²

⁴⁴ Ofcom letter to Secretary Karen Bradley and DCMS 25 August 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644125/Ofcom_Letter_to_DCMS_25_August_2017_and_Annexes.pdf

⁴⁵ *ibid*

⁴⁶ *Media Matters for America's* 24 October 2017 submission to the CMA, <https://www.mediamatters.org/blog/2017/10/25/media-matters-raises-alarm-over-murdoch-sky-bid-report-british-competitions-watchdog/218323>

⁴⁷ Owen Gibson, "Murdoch wants Sky News to be more like rightwing Fox," *The Guardian*, 24 November 2007, <https://www.theguardian.com/media/2007/nov/24/bskyb.television>

⁴⁸ "OFCOM BROADCAST AND ON DEMAND BULLETIN," Ofcom, Issue number 341, 6 November 2017, https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf

⁴⁹ *Media Matters for America*, <https://www.mediamatters.org/>

⁵⁰ *Media Matters for America*, *Fox and Friends* website reference tag, <https://www.mediamatters.org/shows-and-publications/fox-and-friends>

⁵¹ *Media Matters for America*, *Tucker Carlson Tonight* website reference tag, <https://www.mediamatters.org/shows-and-publications/tucker-carlson-tonight>

⁵² *Media Matters for America*, *Hannity* website reference tag, <https://www.mediamatters.org/shows-and-publications/hannity>

Finally, reinforcing the fact that there is no line between news and commentary at the network, Fox News recently hired Sebastian Gorka to serve in a news capacity. Gorka has a demonstrated history of extremism and pushing misinformation. He has been reported as a “sworn member” of a “Nazi-allied” Hungarian group⁵³, has floated the execution of Hillary Clinton⁵⁴, and was previously fired by the Federal Bureau of Investigation for “over-the-top Islamophobic rhetoric.”⁵⁵ The Inquiry group should also seek information from the bidder about how Fox News considered and approved this hire.

The closure of Sky News is not an appropriate counterfactual to the merger

The CMA Inquiry group should be sceptical of Sky’s counterfactual to the merger as detailed in its submission.⁵⁶ In the absence of convincing evidence that Sky News’ closure was being planned before 21C Fox’s proposed acquisition, the closure should not be accepted as an appropriate counterfactual to the merger. Per section 4.3.9 of the CMA’s Merger Assessment Guidelines, when considering any “exiting firm argument,” evidence should be sought that “has not been prepared in contemplation of the merger.”⁵⁷ Furthermore, per section 4.3.10, to accept the “exiting firm argument,” the CMA would need to “believe that it was inevitable that the firm would exit the market and be confident that there was no substantially less anti-competitive purchaser for the firm or its assets.”⁵⁸

Sky’s warning about shutting down Sky News is especially suspect in light of 21C Fox’s stated commitment to “continue to broadcast news under the Sky brand” in its December 2016 proposal bid.⁵⁹ It would be misguided in principle to accept what might

⁵³ “Report: Breitbart Editor-Turned-Trump Official Is A ‘Sworn Member’ Of ‘Nazi-Allied’ Hungarian Group,” *Media Matters for America*, 16 March 2017, <https://www.mediamatters.org/blog/2017/03/16/report-breitbart-editor-turned-trump-official-sworn-member-nazi-allied-hungarian-group/215719>

⁵⁴ “Sebastian Gorka says Hillary Clinton should be convicted of treason like the Rosenbergs: ‘Those people got the chair,’” *Media Matters for America*, 26 October 2017, <https://www.mediamatters.org/video/2017/10/26/sebastian-gorka-says-hillary-clinton-should-be-convicted-treason-rosenbergs-those-people-got-chair/218353>

⁵⁵ Spencer Ackerman, “FBI Fired Sebastian Gorka for Anti-Muslim Diatribes,” *The Daily Beast*, 21 June 2017, <https://www.thedailybeast.com/fbi-fired-sebastian-gorka-for-anti-muslim-diatribes>

⁵⁶ “Sky’s Response To The CMA’s Issues Statement,” Sky, 24 October 2017, <https://assets.publishing.service.gov.uk/media/5a008203e5274a6c8f206ae2/sky-resp-to-fox-sky-issues-statement.pdf>

⁵⁷ “Merger Assessment Guidelines,” CC2 Revised, Competition Commission and the Office of Fair Trading, September 2010, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284449/OFT1254.pdf

⁵⁸ *ibid*

⁵⁹ “INITIAL SUBMISSION TO THE COMPETITION AND MARKETS AUTHORITY REGARDING MEDIA PLURALITY,” 21st Century Fox Inc., 24 October 2017, <https://assets.publishing.service.gov.uk/media/59db6fb240f0b63118216839/fox-media-plurality-initial-submission-to-cma.pdf>

be a threat designed to influence the CMA's decision. In a typical merger, the CMA rightly approaches statements about closing down existing business with scepticism. We ask the CMA to make a robust assessment here in light of what is set out in the merger guidelines and 21C Fox's proposal.

For further consideration and exploration, even without Sky News, 21C Fox would still have access to information about consumers by way of internet service. There is simply no indication that the bidder 1) will not misuse that information for commercial or, importantly, political purposes by way of analyzing behavior and patterns for retargeting; and 2) can be trusted with that level of insight and information. Imagine if News Corp was also the telephone service provider during the phone hacking scandal. The scale of the damage would have been even worse. An approved merger could expose the British public to the modern equivalent.