COMPETITION AND MARKETS AUTHORITY
21ST CENTURY FOX / SKY MERGER INQUIRY

Notes of a hearing with 38 Degrees, Avaaz, Campaign for Press and Broadcasting Freedom, Hacked Off, Media Matters for America and Media Reform Coalition
held at Competition and Markets Authority, Southampton Row, London
on Friday, 27 October 2017

PRESENT:

FOR THE COMPETITION AND MARKETS AUTHORITY
Anne Lambert - Chair
Sarah Chambers - Panel Member
John Krumins - Panel Member
Tim Tutton - Panel Member

FOR THE STAFF
Mary Ayinde - Project Officer
Joel Bamford - Project Director
Sabrina Basran - Project Manager
Tim Capel - Legal Director
David du Parc Braham - Assistant Project Director
Chris Jenkins - Director of Economics
Timothy Ker - Legal Adviser
Steven Pantling - Remedies, Business and Financial Adviser
Senthran Rudran - Business and Financial Adviser

FOR 38 DEGREES
David Babbs - Executive Director
Maggie Chao - Campaigner
Emily Evans - Campaigns Intern

FOR AVAAZ
Nick Flynn - Legal Director
George Peretz QC - Monckton Chambers
Alex Wilks - Campaign Director
Alaphia Zoyab - Senior Campaigner

FOR CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM
Josef Davies-Coates - National Organiser
Ann Field - Chair
Tim Gopsill - Editor
For Hacked Off
Dr Evan Harris - Joint Executive Director
Nathan Sparkes - Policy and Parliamentary Manager

For Media Matters for America
Angelo Carusone - President
Rebecca Lenn - Director of External Affairs

For Media Reform Coalition
Dr Justin Schlosberg - Chair
THE CHAIR: Firstly, welcome to the CMA. Thank you all for making yourselves available today.

What we will do is start with the introductions so everybody knows who everybody is. I am Anne Lambert and I am the Chair of the inquiry group. With us today are two other members of the inquiry group. I will let them introduce themselves.

Q. (Mr Krumins) John Krumins.

Q. (Mr Tutton) Tim Tutton.

THE CHAIR: Everybody else is our expert staff team and I will let them introduce themselves, starting with Joel.

Q. (Mr Bamford) I am Joel Bamford. I am the Project Director managing the staff team in this investigation.

Q. (Mr Jenkins) Chris Jenkins, Economics Director.

Q. (Mr du Parc Braham) David du Parc Braham. I am the Assistant Director.

Q. (Mr Capel) Tim Capel. I am a legal director.

Q. (Mr Ker) Tim Ker. I am a lawyer.

THE CHAIR: We have both got back rows. At the back row is Steve.

Q. (Mr Pantling) Steve Pantling. I am a finance and business adviser on the case.

Q. (Mr Rudran) Sen Rudran, Business and Financial Adviser.

Q. (Ms Ayinde) Mary Ayinde, Project Officer.

Q. (Ms Basran) Sabrina Basran, Project Manager.

THE CHAIR: Could you introduce yourselves?

A. (Ms Field) My name is Ann Field. I am the Chair of the Campaign for Press and Broadcasting Freedom. Regrettably, I need to ask permission to leave at
4.00 pm, if that will be okay?

Q. You do not have to ask my permission, but thank you for telling me.

A. (Mr Gopsill) My name is Tim Gopsill, also from the Campaign for Press and Broadcasting Freedom. I am the editor of the journal Freepress. I actually come from the industry myself because I am a former journalist. I have worked for the National Union of Journalists. I edited their magazine. I was, for some years, the official in charge of discussions on journalistic standards.

A. (Mr Babbs) I am David Babbs. I am Executive Director of 38 Degrees.

A. (Mr Wilks) I am Alex Wilks. I am the Campaign Director with Avaaz.

A. (Ms Zoyab) I am Alaphia Zoyab. I am a senior campaigner at Avaaz.

A. (Mr Carusone) Angelo Carusone. I am the President of Media Matters.

A. (Dr Schlosberg) Justin Schlosberg, Senior Lecturer in Journalism and Media at Birkbeck, University of London and current Chair of the Media Reform Coalition.

A. (Ms Lenn) I am Rebecca Lenn. I am Director of External Affairs at Media Matters for America.

A. (Mr Peretz) I am George Peretz, Barrister at Moncton Chambers. I have been acting for Avaaz. I am not planning to say anything but, being a barrister, I may feel the urge to say something if there is a point more to us.

Q. We have got lawyers here too!

A. (Mr Peretz) I am going to sit back and take notes.

A. (Mr Flynn) I am Nick Flynn, Legal Director of Avaaz.

A. (Mr Sparkes) I am Nathan Sparkes, Policy Manager at Hacked off. My colleague, Dr Harris, will be joining us shortly; he is just in traffic.
A. (Ms Chao) I am Maggie Chao. I am a campaigner at 38 Degrees.

A. (Ms Evans) I am Emily Evans. I am a campaigns intern at 38 Degrees.

A. (Mr Davies-Coates) I am Josef Davies-Coates. I am the National Organiser at the Campaign for Press and Broadcasting Freedom.

Q. Thank you very much. Let me just start with a little bit of background to the hearing. As you know, we have been asked to investigate the transaction which is Fox's wish to take over 100 per cent of Sky on two public interest grounds, media plurality and a genuine commitment to broadcasting standards.

We have published an administrative timetable. We have also published an issues statement, which I am sure you have all read, which sets out the key areas for our investigation.

The reason we have asked you to come today to talk to us - we have all, of course, read all your submissions - is really to explore some of the issues lying behind the public interest considerations, in particular whether there will be a negative impact on media plurality and whether or not the merged entity will have a genuine commitment to broadcasting standards.

I also need to go through some formal things about the procedures and treatment of evidence. We have previously sent you information on our procedures at hearings and about our treatment of evidence. As you see, a transcript of this hearing is being taken. We will publish a version of it but we will give you an opportunity to review it for accuracy beforehand. If you wish to add to or amend your evidence that you give today, please do not do so by amending the transcript but send us a separate letter instead.

I will remind you, as I remind everyone, that it is a criminal offence under
section 117 of the Enterprise Act 2002 to provide false or misleading information to the CMA at any time including at this hearing.

In terms of how we are going to conduct this afternoon, as I think we have told you in advance, we give each party five minutes each - and I am quite strict on timekeeping - to highlight the key points of their submission, and then we will go into our questions. The questions are primarily going to be led by Joel as the Project Director but you may find members of the group or members of the staff team also intervening.

I am just going to introduce one more member, Sarah Chambers who is the fourth member of the group.

Q. (Ms Chambers) Sorry I am late.

THE CHAIR: Before we begin, do you have any questions?

A. (Mr Davies-Coates) I have just got a quick question that someone asked me about submissions already made to the CMA. Are we able to publicly publish those or is there any reason why we are not allowed to?

Q. I see no reason. I look at my lawyers. No.

A. (Mr Davies-Coates) Okay. So, any submission we have already made we are allowed to make public now as opposed to waiting?

Q. They are your submissions. Yes, that is fine.

Okay, you have got an order. Can you tell me the order, please?

A. (Ms Field) The order is Avaaz, CPBF, Media Matters for America, Hacked Off, MRC and 38 Degrees.

Q. That is great, thanks very much. So, starting with Avaaz ...
months of this year calling for the CMA to get a chance to review both the medial plurality and broadcasting standards and it is a great thing to be here helping you with your inquiry. As first timers to the CMA, I thought we should say a couple of words about what Avaaz is and how we operate.

Avaaz means voice or song in several languages. The idea is for citizens to have their voice on important decisions. We have got about 45 million members in countries all across the world and we campaign and communicate in about 17 languages on a wide range of issues. We are a very democratic movement, taking our directions from our membership through polls, tests and funding. Indeed, our model of accepting only small crowdfunded donations means we are totally independent of any institution. Our members clearly show, throughout all of these exercises, that they are concerned about the state of our democracies and they are concerned about the rules such as media rules which can help uphold proper deliberative debate and real democratic values. We are lucky in the UK to have laws to protect our media and, indeed, institutions like the CMA to scrutinise and uphold those things. We do not take those for granted. We feel that you and the secretary of state are like explorers plotting a course across a tough landscape and buffeted by strong winds in the shape of expensive lawyers and powerful interests. You have an unprecedented terrain to walk across and we are very pleased to help.

We have made submissions on common control, on-screen broadcasting standards and on the corporate governance behaviour which is pertinent to the commitment to broadcasting standards as well as supported the plurality submission led by the MRC. I am not going to summarise all of those in
five minutes, you will be glad to know.

What we do show in the common control briefing is that, despite Fox-Sky's inaccurate account of Ofcom's report, Ofcom were right in their legal analysis of the transaction under the complex provisions of section 58 of the Act. The critical issue is to understand, beyond that, the extent to which, in reality, the Murdoch family now control Fox and would control Sky if Fox were to get complete control of it. The evidence we provided you with shows that, at the moment, even supposedly independent directors in key Murdoch businesses are not truly independent. The Murdochs are able to, effectively, exercise complete control of those businesses.

We brought some evidence as well showing that there are a series of class action lawsuits from independent shareholders which have been settled for huge amounts on this issue. This question of control is, obviously, relevant to the editorial agenda, the business ethos and attitude of the businesses which the MFT have those stakes in.

In our submission on on-screen broadcasting standards, we show that Ofcom's bald summary in its public interest test report that Fox's compliance was “good” conceals a pattern of Fox breaches and potential breaches, which we urge the CMA to look into further, and that Fox's responses to Ofcom show that they either have not understood UK media laws or do not respect them. There are a series of examples there in our testimony. I hope we come to them later.

Fox argues that Sky could not be Foxified because of strict UK rules but there are at least two problems with that. The main one is that there is often a flexible approach, to put it generously, to complying with regulatory standards and even
the criminal law by the Murdochs. Our corporate governance submission responds to your request for information on their broader attitude to regulations and compliance. We show that the Murdochs, across six businesses and three continents, have often pursued commercial and political power at the expense of ethical and legal considerations. We have also shown that, in some cases, the Murdochs have misled merging parties and regulators when they were about to pursue takeovers and they have done the opposite or done other things after the takeovers. Importantly, we believe that, in this bid, the Murdochs may have done so again, shooting a hole in their credibility.

In December, in the preliminary submission to the DCMS on the bid, Allen & Overy, on behalf of Fox, wrote that:

"21CF has adopted strong governance measures and controls to ensure it meets the highest standards of corporate conduct. Amongst other things, these arrangements provide for the rapid escalation of material issues from individual businesses through the Compliance Steering Committee to the independent directors of the Audit Committee and the full Board."

Yet, revelations over the weekend have shown that, just weeks after sending that to the DCMS, the Fox Board learned that Bill O'Reilly was settling a harassment claim by a long-serving female staff member, but they failed to find out details of what harassment was alleged to have occurred or the amount being paid to the victim. They let Bill O'Reilly get away with declaring this, his sixth such settlement - the first was in 2004 -, a personal issue between him and his junior colleague. They went on in the subsequent weeks to award
Mr O'Reilly a 30 per cent pay rise as part of a new four-year contract, sending
a signal that executives will be protected whatever their behaviour. Rupert
Murdoch was and is the CEO of Fox News.

We look forward to the CMA using its powers to obtain a full picture of the
threats to the public interest from this family which so often has shown an
attitude of defiance rather than compliance. Thank you.

Q. Admirably to your five minutes. Thank you very much. Now the CPBF.

A. (Mr Gopsill) I am Tim Gopsill. I am presenting this. I introduced myself before
as a journalist because our approach to this is very much with the editorial
content, particularly of Sky News and the likely effect of the merger.

We were very pleased that the secretary of state included corporate
governance in the consideration of broadcasting standards but our concern
very particularly is the mechanisms by which we believe - in fact, we are
convinced - that a Sky News wholly owned by the Murdochs would without
question breach the Broadcasting Code. We are talking about, particularly,
section 5 of the Broadcasting Code which concerns fairness and impartiality.

The basis of this is that the Murdochs for years have made very clear their
disdain, if not contempt, of the very concept of regulated broadcasting. Of
course, Sky is regulated but they have always complained about that.
Rupert Murdoch and his son, James, who is the chairman of Sky, have both
made very strong statements. James Murdoch said in a speech in Edinburgh
in 2009:

"A heavily regulated environment with a large public sector
crowds out the opportunity for profit, hinders the creation of jobs,
and dampens innovation in our sector."

In 1989 in a speech in Edinburgh, Rupert Murdoch defined British broadcasting as:

"... no more than the parading of the prejudices and interests of the like-minded people ...

and:

"... television has operated on the assumption that people could not be trusted to watch what they wanted to watch, so that it had to be controlled by like-minded people who knew what was good for us."

I am sure you can look up the references of the two MacTaggart lectures by both of them.

The question is, given Murdoch’s thinking on the subject, how it would be likely, if not certain, to operate in practice. Fortunately, the Murdochs themselves have given us clues.

In 2007, Rupert Murdoch was interviewed by the House of Lords Communications Committee in which he said the very well-known quote, which you again can look up, "Sky News would do better if it could be like Fox in the USA". The phrase that he uses for the improvement that will be made, very specifically and interestingly, is that it has not made "presentational changes". That is a clue to how it operates.

I do not know how many people have seen Fox in the USA. I am sure we have all sat in hotel rooms late at night and watched all these people shouting at each other at the top of their voices with contrived controversies. The way it
works is that Fox, in its weekday evening programmes, presents a series of very strident talk shows in which strong, conservative points of view are reinforced between each other. The statements then that are made are put into the news bulletins themselves and the news agenda is set that way. The other media, which Murdoch always disdains as the "liberal" media, feel obliged to follow suit and those stories, which can be completely untrue, then find their way into the mainstream.

I want to give you two very short examples. They are interesting because they both affect the UK. There is a broadcaster called Judge Andrew Napolitano who is the legal analyst for Fox News. He produced a story which said that GCHQ in Britain had been used by Barack Obama to wiretap Donald Trump during the election campaign. The story was, obviously, completely untrue - this is all referred to in our submission - and after a couple of days, they withdrew the story and conceded there was no truth in it whatsoever. Yet, that was not by some studio guest but by their own security legal analyst.

There is another analyst called Steve Emerson, who is a terrorism analyst. He produced a story a couple of years ago that the city of Birmingham in England was entirely populated by Muslims and other people did not go there and he made other comments about the Muslim community in Britain, all of which caused great offence; and again they withdrew it.

Those stories, which were completely untrue, even though made by their own analysts, got a lot of air time and were placed very firmly on the news agenda. This is extremely dangerous.

So, if we ask ourselves the question, "What is commitment to broadcasting
standards?” Fox say that they are required to comply. Of course, they are required to comply with section 5. But the question is not compliance; it is genuine commitment. The secretary of state made this clear when she referred it to you that Fox have to show that they have a genuine commitment to broadcasting standards. In Britain, that means compliance with the Broadcasting Code of Ofcom. There is no question that they do not have that genuine commitment; whatever happens, they certainly start without it.

Q. Thank you very much. Media Matters for America ...

A. (Mr Carusone) Thanks for having me. Media Matters is a media watchdog. We primarily focus on conservative media. We watch all the media but we are particularly focused on conservative misinformation because we have an awful lot of it. So, we are steeped in Fox News and a lot of that is reflected in our submissions. We understand the content and, in particular, the insidious way that they blur the line between commentary and news.

It is not a hard line at Fox News. In fact, that distinction where they have started to elevate it really was born in the summer of 2011 after the Glenn Beck fallout - - who had lost a lot of advertisers; Fox News having an awful lot of difficulty booking guests; and Roger Ailes announced a course correction and it started to really emphasise the distinction between the two. It was mostly, from my opinion, a branding assessment, an exercise, not really a reflection of a true distinction between the two.

But, in particular, not only understand the way they blur the lines but also the way in which they can engage in targeted retaliation. According to reports that came out in 2016 from a New York magazine reporter, Fox News had retaliated
against one of our investigative reporters who had been doing some work
exposing the ways in which slanting the news was coming as official directives
from news executives there, in particular Bill Sammon and a few others that
actually are responsible for the news divisions. He was hacked. His phone
records were obtained through illegal means, if this reporting is accurate. That,
Obviously, is one example of it.
As an institution, we also understand the retaliatory power because they led a
multiple-weeks’ long campaign, every hour on the hour, organising their
audience to petition the IRS to take away our (c)(3) status (c)(3) which is
essential to be a non-profit in the States; you need to be a (c)(3). They literally
organised a campaign to have us removed from that [3]. I imagine we are
going to talk about that. A lot of that is in our submission.
What I really just wanted to do was give one story about one station because I
think it really ties together a lot of the considerations that we are looking at
today. It is a Tampa station, WTVT. The Murdochs took it over in the 1990s.
It is an owned-and-operated local station, meaning that they have the broadcast
licence for it and they operate it as opposed to an affiliate which is connected
to it but they have no editorial control. This one they actually control. That
Tampa station was a well-known, well-received, well-regarded station for
cultivating investigative reporting and journalists.
There were two journalists working on a report about a bovine growth hormone
in milk. It is banned in many parts of the world. It is still legal in the States;
RGBH. They were just working on an investigative report about it; did all the
due diligence. They interviewed the company who was responsible for
producing it, Monsanto. Three or four days before the report was about to air
Monsanto sent a letter to Roger Ailes, the chairman of Fox News, threatening
that, if the report were to run, it would have dire consequences for Fox News
and its owner, explicitly citing Rupert Murdoch. The report was delayed. The
general manager of that station, who himself had a background in investigative
reporting, vetted it again just to deem that it was able to be aired and set a new
time to air it. Monsanto sent a second letter and then the report was delayed
indefinitely. The general manager was subsequently fired and replaced by a
non-news-experienced person, somebody that did not have a news
background to take over the station. Those investigative reporters were
sidelined and, ultimately, sued for retaliation.

The reason I highlight this story are for the takeaways. One is why was the
letter addressed to Roger Ailes? Because, he was also not just the chairman
of Fox News but Rupert Murdoch had put him in charge of Fox Television
Stations, overseeing all of the owned-and-operated affiliates. It is an illustration
of the way in which the Murdochs exercise relationships with key executives in
order to have vertical control over the large parts of their corporate entities.
This was a way of imposing discipline and consistency and to put key people
into decision-making roles like that.

Why did they cite Murdoch? The mere fact that Rupert Murdoch was
referenced in that letter shows that Monsanto believed that, even indicating him
and mentioning him, somehow he should have some editorial control; that it
was not some ridiculous thing to ask Rupert Murdoch to engage or weigh in on
a local news report. That is atypical.
The other takeaway from that is that not only was Monsanto a large advertiser of the Fox empire but they were also a client in another company that Rupert Murdoch owns that was a part of News Corp that was responsible for placing media bias on other media properties. They were a customer as well, aside from just an advertiser. It really illustrates and underscores the interconnectedness of these relationships and how that can influence not always the left-right divide but important life-essential information and really good reporting and how that can be stifled and swept up as well.

The last reason I think this station is worth highlighting is because it is not just this one report; I also think it gets to and underscores the way in which these entities operate. Not that long ago, after a series of consolidations, much of the local -- all of these owned-and-operated stations are in different markets; they are not in the same area. It was recently done so that almost all of the on-screen graphics are now being produced out of a digital studio in this one local owned-and-operated station, which means that this station is producing the on-screen graphics for much of local news that they are not even connected to. I think that is another illustration of the way in which they operate. Not only does that impose consistency and control but it also eliminates a lot of local relationship. Most communication is non-verbal. Those on-screen graphics matter. The Fox people understand this and they recognise that having a single graphics producer has real power.

I think that story just ties together a few threads and I wanted to share it today.

Thank you.
A. (Dr Harris) Thank you. We believe that you are right in your issues document to recognise that what will matter in respect of the genuine commitment to broadcasting standards provision is their track record, that their track record matters, and including their conduct and their track record in non-broadcasting entities.

In my view, you would need to be confident that they had a genuine commitment to broadcasting standards and that would not be possible, that conclusion, if it is clear that they did not have a genuine commitment to any standards or any standards regime which conflicts with other priorities that they have in terms of running their business. The evidence of that is very clear. One does not actually even have to look --- and perhaps it is a distraction to look --- at the narrow issue of broadcasting standards when what matters is whether you can assess a genuine commitment to those standards or indeed any standards.

What would a genuine commitment to broadcasting standards or indeed any standards look like? It would involve all, or at least some -- I would say all --- of these: that, when something goes wrong, there is an agreement and a determination to get to the truth, not to sweep it under the table; not to say things from a corporate leadership position, as the Murdochs have, that show a disrespect or a disregard, to put it mildly, for adequate standards and governance; to comply with societal standards of regulation in other businesses rather than not to do so nor, indeed, to urge others not to do so; to show a change in corporate governance following the disaster that overtook them at News Corporation; and specifically to ensure that they do not run a regime where impunity is provided, neither for the individuals who were involved in the
failures of corporate governance (to put it at its lowest), nor to encourage a
culture where it is seen that people can do that and get away with it. They
ought to also, as a minimum, be consistent with the statements that they make,
statements of remorse or statements that they wish to change.

It is important to understand the scale of the wrongdoing that has been admitted
or has been found in court. Thousands of ordinary people, and people in the
public eye, had - voicemails intercepted. Thousands of people were data-
mined by private investigators getting their personal data, telephone data,
medical data, banking data; thousands. This took place over what is said to be,
and has been shown to be in settled cases, a decade. Dozens of police and
public officials receiving corrupt payments from journalists at News Corporation
and, recently, six years after the allegation, an admission that computer hacking
took place under the auspices of senior journalists at News Corporation.

In addition to that, there are now allegations that have been taken seriously by
the courts, that are going through the courts and have survived attempts to
strike them out as groundless, that there were years of hacking at The Sun
newspaper under the editorship of the person that the Murdochs have
specifically chosen, since their new post-2012 regime started, to put in charge
of corporate governance at News UK.

There are also allegations that have been made - and this has been deployed
in open court - that the senior executives, including those that the Murdochs
have retained in position (that is James Murdoch) - or put back in positions of
power and responsibility for corporate governance - namely
Rebekah Brooks - not only concealed through a failure to properly investigate
and making statements that were known to be untrue - but also destroyed
evidence. These have been heard in court and one would think that it is
important that you will need - and I am sure you realise - to get as close to
getting to the truth of those allegations as you can.

Instead of the things that I think that most people would think would be the
components of a genuine commitment, let us look at what has happened. The
Leveson Inquiry made findings critical of Murdochs. In the Ofcom fit and proper
test, which I know is a different threshold and different terms of reference to
what you have, Sky only “passed” due to the non-Murdoch majority on the
Board, it is fair to say, and they were critical of the record. Now, a record is a
record. You cannot change the record. What you can do is change staff. So,
where staff have been implicated in wrongdoing or incompetence that has led
to a failure of corporate governance, you do not promote them or reward
them - that encourages impunity - but you change them and/or you change
policy, and you change your approach to regulation.

None of those have happened in the non-broadcast media sector that the
Murdochs control. Their only response to these criticisms has been to advertise
that they have got a new corporate governance structure since 2012. But it is
under that corporate governance structure that they have re-employed - and
this is in the public domain - someone who was convicted of a criminal offence
to a senior position --- this is Mr Nick Parker; it is in the Ofcom report --- in one
of their newspapers, even after the Murdochs went on record saying they would
have “zero tolerance of criminal wrongdoing”. You cannot get further from zero
tolerance of criminal wrongdoing and not creating a culture of impunity by
“welcoming back” - that was the term used - someone convicted of a criminal
offence in their work for the Murdochs. And reappointing someone responsible
for the previous failures of corporate governance to be in charge of corporate
governance at News UK, Rebekah Brooks, is a rejection of a change and to
say that things have moved on.

And it is very clear that they have fought against getting the truth out. The
second part of the Leveson Inquiry is very clear in its terms of reference that it
is to get to the truth of the extent of criminal wrongdoing at News International
and the extent of any failures of corporate governance. That has been opposed
by the Murdochs and they have used their newspapers to campaign against it
and encourage other people to campaign against it. I do not see how that
portrays any kind of genuine commitment to corporate governance.

In addition and finally, they have rejected the model of regulation proposed by
the Leveson Inquiry despite saying at the Leveson Inquiry that they recognise
that the existing regulatory model had failed. Not only have they rejected what
was proposed by the Leveson Inquiry and endorsed by parliament, but they
have campaigned to encourage others to boycott it as well. That shows a
rejection of normal standards of corporate governance, in our view.

Q. Thank you very much. Now it is the MRC.

A. (Dr Schlosberg) Thank you very much for having me. I am going to speak to
the issue of plurality, which has been the focus of both our submissions in
phase 1 and this inquiry and also the focus of my research for the best part of
the last decade.

The first thing to say in regard to this is that it is quite easy to see on the surface
level why 21CF and, indeed, many people think that we live in an age where
we have abundant sources of news and media at the click of our fingers and
virtually any conceivable issue or story gets some kind of coverage that is, in
theory, accessible, especially on digital platforms, and, therefore, that this
should not be an issue in this inquiry. If we drill even slightly below the surface
it becomes equally easy, in fact more compelling to see why -- when we ask
the question of who produces the news that matters, who produced the news
that cuts across fragmented audiences, who produces the news that reaches
beyond their own direct readership, I think the answer is very clear that we still
live in an age where that power of voice is exercised by a very small number of
individuals and institutional megaphones. That is really what our research
throughout this process has spoken to.

There are two sources of confusion. One, as I have just mentioned, stems from
the fact that, at the retail level and at the level of availability - to use Ofcom’s
language - there is an abundance of news sources. But when we drill down to
the wholesale level, we find that, actually, there is a very small number of
institutions that are able to produce the kind of generalised regularity of output
that we associate with daily news in this country (much less, for example, than
in many countries in Europe, and considerably less than in the US as well).

The other source of the confusion concerns the role of so-called intermediaries.
There is this prevailing assumption that is made by 21CF and many other
people that the rise of platform monopolies, particularly Google, Facebook and
Twitter, has indirectly eroded the agenda power and gatekeeping power that
was one vested in the hands of traditional or conventional media operations.
Part of the problem is that many of those platforms do the very opposite; they actually amplify the voices of mainstream incumbent news brands. We can see this at a very cursory level. If we look, for example, at the latest Google patent application for its news algorithm, it is very clear that the kinds of news organisations that its algorithm gives prominence to are those that produce news in volume, on a scale and on an international level that only a very few organisations in this country are able to do. One of them is, obviously, the BBC. Another is Sky News. And others are those that are controlled by the Murdoch family, namely The Sun brands and The Times brands. That is really, I think, the crux of the issue from plurality concerns in regard to this review.

The other thing we need to think about is, as I mentioned earlier, this issue of agenda power. I think this was really the cliff edge where the phase 1 review left off. Ofcom acknowledged that News UK titles in particular but also Sky have the potential to exercise agenda influence beyond their direct audiences. That is evidenced in a number of ways. It is evidenced in the data provided by News Corp and Sky themselves, which show that, actually, they have a disproportionately large presence on so-called intermediary and aggregated platforms, whether that is Apple News or Snapchat of Facebook’s Instant Articles.

One of the points that Ofcom makes is that there are limitations to its survey-based research on news consumption and medial plurality. One of the limitations is that we live in a world where the news is increasingly disaggregated. People are no longer able to necessarily recall or even be aware of exactly who produces the news that they consume. If you ask them...
the standard question, "Which source of news do you use regularly nowadays?"
and you present them with a list of options that includes brands like Google and
Twitter, et cetera, then they may well cite those brands even though they are,
in fact, actually reading stories by The Sun or watching videos by Sky News,
for example, on those platforms.

It is one of the relatively unexplored areas in scholarly research within this field,
but I do not actually accept that this is an impossible or even particularly difficult
thing to explore, particularly for the CMA, because there is abundant data that
is collected by commercial media analytics agencies, which show, with very
strong relevance to this inquiry, exactly what kind of presence and performance
these brands have on platforms like Facebook, Twitter, Google and YouTube.

Indeed, we have collected a sample featured in our submission, which shows
that Sky, in particular, has a disproportionate presence on these platforms. I
think that is partly because it is very strong in audiovisual content but partly
because I think we can also deduce something about Sky's business model. It
is a loss-making entity and it exists, in many ways, to promote primarily the Sky
brand. Therefore, it is logical that it would seek to leverage its content as widely
as possible on as many platforms as possible.

We see a similar thing has happened with The Sun, particularly since it
abandoned its paywall in 2015. Not only has it grown spectacularly in terms of
its own direct readership and page views on its website but it has developed a
very strong presence on social media and aggregated platforms.

The third key area is the agenda influence that titles like The Times and
The Sunday Times still have in spite of the fact that they maintain a very high
paywall on their digital platforms and in spite of the fact that The Times has, for
decades been - in fact, since before Murdoch purchased it in 1981 - a loss-
making brand. It is very influential. That is clear in the way that both successive
editors and News UK spokespeople have articulated The Times's role, which is
very much about setting the news agenda. It is also very clear in the research
that we have produced for this submission which shows that The Times is
actually one of the most influential news brands in terms of agenda leading
stories; that is to say, what goes as a headline in The Sunday Times or any
edition of The Times newspapers is very often a cue for news outlets across
platforms that this story is a story worth telling. That really goes to the heart of
plurality concerns, particularly, as Ofcom has defined it, in terms of the ability
to exercise excessive influence over either public opinion or the political
process.

On the point of profitability, it is worth just emphasising that we live in a world
today where news is increasingly less profitable, but that in no way is that a
proxy for declining influence. In fact, the very opposite seems to be happening.
As institutional investors withdraw from major news assets we see that vacuum
being filled across Europe and the US and in this country by oligarchs, by
individuals, by families who, I think it is fair to say, have an interest beyond the
commercial opportunities of their asset, whether that is in the prestige of owning
such an influential title or in the potential to leverage it for political access and
influence.

I think that is certainly clear in the case of the Murdochs. If you look at the
history of the way Rupert Murdoch has built his empire it has been very much
about investing not just in news for profitability but news for political access.

We have seen that in the way that he still enjoys to this day vastly disproportionate access to the highest levels of government. We did research which showed that News Corp executives and the Murdochs met more frequently with the Prime Minister and the Chancellor than any other private sector individual or organisation by far. Interestingly, the second on the list was the Lebedevs who are owners of The Independent print and Evening Standard titles. That just demonstrates that there is still this reality whereby, if you are the owners of influential media brands, you can, should you wish to -- and not all media proprietors do wish to -- but the ones that do can open doors to the most senior levels in government at a rate that no one else can.

Finally, I just want to speak to this issue of the shift to full control and the implications thereof. It is very clear that there are formal structural reasons why the acquisition will enhance control over Sky and Sky News in particular. Much more important for the purposes of this review is the informal context. There have been decades of sociological research including a very recent study that has showed that, when you get consolidation of media in the hands particularly of individuals or families, there is a consistent correlation between that and declining levels of editorial independence, based on the testimony of journalists and editors themselves. I think that is really what we have to consider when we think about this question of the risk that this deal could pose to the public interest; that the risk is that even just a friendly pep chat in the newsroom post acquisition could have a trickle-down influence; it could result in certain perspectives and values being internalised both by editors and journalists. That
THE CHAIR: Thank you very much. Finally, we have 38 Degrees.

A. (Mr Babbs) Hi. Thank you for inviting us. This is also 38 Degrees's first time in front of the CMA, so I will start by explaining about how we operate and why we have an interest in this.

38 Degrees's founding assumption is that democracy works better when more people get involved. We operate as a network of a very large number of UK citizens who wish to participate in the democratic process more. We have about 2.5 million active members drawn from all socioeconomic groups and all areas of the UK. Our campaigning agenda is set by a combination of surveying and discussion with those members to decide what issues we work on and how we operate. It is from that interest in democracy and that interest in serving a wide-ranging membership drawn from the general public that leads 38 Degrees to be encouraging the CMA to not let this Sky takeover go ahead.

What I really wanted to reflect to you was that I do not come here as an expert in media matters, as so many of this panel are, but I wanted to reflect to you that I think there is overwhelming evidence that it is not just experts who have concerns about this deal. Those same concerns are widely held amongst the general public. That is what has led this issue to become a 38 Degrees issue.

One of the main things that we have done as we have engaged with this is crowdfunded donations from our membership to conduct public attitudes research into the public views this deal.

I also, as preparation for coming here today, surveyed the 300,000 38 Degrees members who have taken part in aspects of our Murdoch campaign before, to
ask them why they were part of this campaign and what they wanted me to say
to the CMA on their behalf. What we found is a very high level of alignment
between what the 38 Degrees members expressing concerns are
saying - probably in some cases submitting to the CMA directly - and what our
research which we commissioned by YouGov also says. When we have asked
members of 38 Degrees whether they think the deal should go ahead the
results are very much in line with when YouGov have asked the general public.
We have submitted quite a lot of detail on the YouGov research to you. I would
highlight that YouGov have found pretty much every age group, every political
persuasion, there is majority concern about this deal.
On the issue of media plurality, we asked the public if they thought giving 21st
Century Fox 100 per cent ownership of Sky would or would not give Rupert
Murdoch too much power over the UK's media. We asked that question
three times and, on every occasion, at least two-thirds have said that it would
give the Murdochs too much power. Most of the rest are made up of "Do not
knows". There were very few who think that it would not.
When we have asked them whether they feel that Rupert Murdoch and his
company can or cannot be trusted to have a commitment to fair and neutral
reporting at Sky News, 68 per cent say "Cannot". When we have asked them
about their commitment to corporate standards, ensuring their employees are
treated fairly and will not experience racial or sexual discrimination and
employees will not engage in criminal activities, 61 per cent say that the
Murdochs cannot be trusted to ensure those things.
What we have heard from everyone else is that the public's concern lines up
with the evidence. The overall impact of this deal going ahead would be to undermine public trust in the media landscape in the UK and in Sky as a broadcaster.

I wanted to conclude by just offering one reflection about another thing that has come out for me in the surveying of 38 Degrees members about what motivates them in being so concerned about this deal, and that was that there is a real strong, gentle-but-firm, patriotic concern behind a lot of what I think people are saying. We have a history in the UK of having a media landscape which is better than that which Fox News has contributed to in the US. At a time of great political polarisation and turmoil, the last thing we need is a deterioration in broadcasting standards in the UK. The impact of this takeover, I think it is widely felt by the general public, would be negative both at the level of our media and at the level of our politics. That is, I think, why so many people are looking to you as the CMA to be brave in your decision and to not let this deal go ahead.

THE CHAIR: Thank you very much. Thanks to all of you for both giving us information but also keeping to time, which is great.

Joel, over to you for some questions.

Q. (Mr Bamford) A couple of opening remarks. Firstly, we have a series of questions. Some are general questions which I will put to all of you; others are in relation to individual submissions where I have to do further probing. Our questions should not be taken as an indication of a forming of a view; they are just an exploration. I will go through three key areas. The first will be around plurality; then I will look at broadcasting standards; and, finally, the impact of
the merger in general.

I would like to start with respect to plurality. We have seen from the Ofcom report various metrics around reach, consumption and share of reference. I wondered whether you could expand on what factors might mean that a media or news provider's influence may be greater or weaker than those metrics might tell on the bare fact of the numbers.

A. (Dr Schlosberg) In terms of reach and consumption - and this is where we look at a platform-by-platform rather than a cross-platform picture - it is pretty clear that News UK still has a strong dominant position within print media. Obviously, that is qualified by the fact that print newspapers are in long-term decline. Nevertheless, they still sell millions of copies every day, notwithstanding the point that I made earlier about the potential agenda influence of those brands. So, there is a dominance there and a dominance that may be even greater than simply what reach and consumption measures suggest.

In terms of television, in the conventional reach and consumption measures that Ofcom uses, Sky comes out as the third biggest national television news provider after the BBC and ITN. That does not take into account, of course, that Sky is the only competing 24-hour news provider to the BBC. So, again we could consider the influence as being, if anything, greater than what the conventional measures suggest.

In terms of radio, we know that Sky News has the exclusive contract to supply the commercial radio sector with wholesale newsfeeds around the clock. There was a controversial decision made by Ofcom in 2015 to discount Sky as the wholesale provider to Global and Bauer stations, which are the two biggest
commercial radio groups. Ofcom reflected on this in their public interest report. One of the points that they made is that that decision was based on the fact that Global and Bauer do operate their own newsrooms, which is true. However, we have done research, both for the phase 1 and more extensively for this review, which shows that, very clearly, there is shared content between Global and Bauer stations, particularly the use of shared clips. That can only come from Sky, which is the exclusive wholesale provider. So, at the very least, what we are concerned with is that, if you discount Sky's wholesale provision to those radio groups altogether, then you miss out on something. We suggest, based on our evidence, that a much more accurate and appropriate measure would be to attribute 50 per cent of the wholesale news provision for those groups to Sky. If you do that, it has a significant impact on the cross-platform picture based on Ofcom's share of references. In particular, if we think of Sky and News Corp titles combined, which follows from the presumption of control principle established by Ofcom, and which is really the basis on which this should be assessed because those are the titles that would, effectively, fall under the control of the Murdoch family post-merger, then they are now only eclipsed on that measure - the shared references - by the BBC.

Q. (Mr Bamford) Could I just ask a question on the radio context? Having read the paper and the research that you put in there, we suggest that bulletins across, as you say, the radio stations, are very similar, including the same news clips provided by Sky. Did your research also look at the selection and ordering of the programmes and the commentary around them and any contextual
matters in that way?

A. (Dr Schlosberg) Yes, absolutely. By the way, we are not saying that they are the same and we are not at all discounting the fact that there is some original newsgathering that is being done, particularly by Global stations, actually. We did do precisely this in-depth, qualitative analysis that you suggest. If there is a vox pop or a clip of someone being interviewed, the way in which it is presented by the stations may be, "X spoke to Global News" or, "X spoke to Magic FM", et cetera, but, in fact, when it is the same person that is doing the interview and supplying the recording, then that is a cosmetic presentation of newsgathering. It is not a reflection of actual wholesale newsgathering on the ground that, for example, individual stations or Global and Bauer may be doing. I am not saying they do not do that but it is clear that a lot of what is presented on the programme is presented as original newsgathering when, in fact, it is very likely that much of that comes from Sky. Indeed, there are many instances where Sky reporters are actually referenced by both Global and Bauer stations.

Q. (Mr Bamford) That is in the context of newsgathering. Did it look at the editorial choices around where, say, a news clip would be placed within a running order?

A. (Dr Schlosberg) Yes. It is fair to say that there is a significant variance there. It is very easy to do that. You do not need to invest in newsgathering to pick and choose which stories from the wholesale newsfeed you want to run as your lead headline, which ones you want to ignore altogether, et cetera. So, the ordering, there is certainly variance there.

In terms of the range of stories that appear on the bulletins that we looked at, there was much more homogeneity between Global and Bauer than there was,
for instance, between the Global and Bauer stations and BBC stations. It was
clear from our analysis that the BBC is following a much more independent
editorial agenda. Again, that does not necessarily prove that there is reliance
on Sky as the wholesale provider but it at least suggests that there may be
some kind of influence there. Coupled with the hard evidence of shared clips
between Global and Bauer stations, I think that discounting Sky altogether
really does skew the picture in the wrong direction.

Moving on to the digital context, that is, obviously, much more complex because
there are so many different measures even if we just restrict ourselves to reach
in consumption. The most conventional measure is page views. If we look at
page views, again it is relatively consolidated, and the market is more
consolidated than in much of Europe and America. We see, for example, that
out of the top ten brands, based on page views - this is the data collected by
comScore in April of this year and I am sure you could get access to much more
recent data - it is very much dominated at the wholesale level by traditional
broadcasters and newspaper groups.

In the digital context, we have to look at other measures including things like
shares and likes and audiences on Facebook and Twitter. That is where I
mentioned our research speaks to and it shows that Sky, in particular, is
disproportionately influential on those platforms.

In terms of the cross-media picture, we have to be very careful about the share-
of-references measure, very cautious, partly because of the problem that I
suggested earlier that there is this difficulty in people recalling or even being
aware of who is actually producing the news that they consume. If you look at
the way Ofcom presents this data, it is now acknowledged that there needs to be a distinction between intermediaries such as Facebook and Google and the wholesale news brands like Sky and News UK titles. But the former still account for a piece of that pie; they are still attributed shares. So, if someone says they get their news from Google, that contributes to that figure of market share. That is, potentially, a black hole because we do not actually know what sources of news – at the wholesale level - are being consumed on those platforms.

Some people argue, I think with some validity, that there is an editorial role played by these intermediaries in the way in which their algorithms prioritise certain content over others and the way in which they are able to direct the flow of news traffic. I would argue, just as retail channels do not have the same kind of power as wholesale channels, intermediaries do not have the same kind of power in respect of particularly the plurality question which is, ultimately, about the power to dominate public conversation and, by extension, the political process. That is about who produces the news that reaches across those audiences.

So, I would say, in answer to your question, taking into account standard reach and consumption measures, the picture of plurality is not good. If we take into account the reach and impact of Sky and News UK brands and intermediaries it has worsened. If we take into account Sky's wholesale influence over commercial radio, it is worsened further. If we take into account the agenda setting power of key News UK brands across platforms, then it is worsened ever further.

So, based on the research that we have produced, the problems of plurality,
which -- by the way, in the phase 1 report, Ofcom pulls no punches. Its language is actually much stronger - if you compare it to the 2010 public interest report on the News Corp BSkyB merger and which is the closest precedent we have - about the fact that plurality is not a solved problem in this country. I think the research that we have produced not only reinforces that but suggests that it is worse.

Q. (Mr Krumins) In terms of around traditional measures, we have to look at those because those are recognised by Ofcom and those are, primarily, the measures we have available. You used the phrase that this combination would only be eclipsed by the BBC. Then, regarding plurality on standard measures, you said the picture was not good.

I would like to push you on exactly what is an okay or acceptable share of reference for any party to have versus what is an unacceptable share. Where is the line that you would feel uncomfortable with any party, be that Murdoch or anybody having.

A. (Dr Schlosberg) That is a very difficult question. This speaks to the other underlying problem of what is plurality sufficiency in more general -- I think that we have to take it in the round. One of the things that Ofcom made clear in its plurality measurement framework is that contextual factors such as what kinds of programmes, what kinds of news operations does a particular owner or institution provide, what kinds of safeguards and protections are in place to ensure that this thing called internal plurality is upheld – all of that non-numerical, qualitative context has to be factored into any assessment of
If you take, for example, a country like Slovenia, the market is simply not big enough to support less than a handful of national news providers across platforms. The question for regulators becomes a question of internal plurality. If you accept the fact that you cannot have a greater number, what kinds of news do these actual organisations produce?

If we look, for example, at the BBC, we can see that there are very stringent guidelines both in its own editorial guidelines and now supplemented by the Broadcasting Code to ensure that there is a diversity of views represented, that there is editorial autonomy within the BBC and, to that extent, we have to consider the BBC’s position as qualified in that share of references as a result. So, when we look at News Corp and Sky and when we see that, in a post-merger context, this will effectively mean that the Murdochs have control over the joint second biggest share of references, we have to ask the same question about their internal plurality. It is pretty clear, certainly in terms of newspapers, that there is not that plurality in existence both in terms of the range of viewpoints represented, that The Times and The Sun have always had a conservative-leaning editorial agenda, but also in terms of their editorial independence and autonomy. I think the submissions by other groups here really speak to that; that, actually, there is very little that we could say amounts to internal plurality within those organisations. The great concern is that that is going to impact on Sky in a post-merger context.

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1 Clarification provided by the MRC following review of the draft transcript.
Q. (Mr Krumins) If I understand, you are saying it is not the share of reference that they would have, it is whether they have internal plurality or not. You are not concerned about whether this is 10 per cent or 15 per cent or 20 per cent share of reference.

A. (Dr Schlosberg) It is both.

Q. (Mr Krumins) Let us go to the first part. What is too large a share of reference?

A. (Dr Schlosberg) It is very difficult to answer that because I think you have to contextualise it with reference to things like internal plurality. You can use any increase in the share of references as a trigger or justification for review, but not as the basis of. That is why Ofcom has resisted coming up with a definitive definition of plurality sufficiency. The Competition Commission did the same thing in the ITV/Sky case. I think it is very difficult to put numbers on it. This is where plurality assessment in general and particularly in the context of this review is a very challenging job.

If you do want to have a benchmark of comparison you could look at what exists in comparable media markets internationally. If you look at, for example, the work done by the Reuters Institute on their annual digital news reports, it is clear that, as I said, on even conventional measures, there is less of that plurality here than exists in other countries. with comparable or even smaller markets. I think you have to take into account those contextual factors.

It is the same thing with the question of reach in consumption versus agenda influence. One of the arguments that 21CF tried to make in their initial

2 Clarification provided by the MRC following review of the draft transcript.
submission to you is that reach and consumption are not proxies for influence. They make this point very strongly in respect of The Sun which has a dominance both of the print news market but also, increasingly, the online news market. That is true and accurate in a sense. You have to take everything with a pinch of salt. Clearly, the fact that the BBC reaches audiences directly that are much greater really than most commercial competitors has to be taken into account when you are considering things like impact and influence.

Equally, you also have to take into account the fact that titles and brands like The Times who do not reach anywhere near those kinds of audiences can have a disproportionate influence even on the BBC's agenda. In fact, one of the interesting things about our research in terms of the intermedia agenda power is that the BBC ranks pretty low. That reinforces findings from previous research done by Cardiff and others which suggests that, actually, newspapers, despite their declining circulation, despite their declining revenues are still very influential. In fact, there is no evidence whatsoever to suggest that influence has declined in terms of the broadcasting agenda.

(Ms Field) For the CPBF I just want to add a point about this question of what is too big, what is too small. It is a gritty question. The simple answer from the point of view of campaigning organisations such as we have been for the last nigh on 40 years is that the current level of 30 per cent, 35 per cent, 40 per cent of one area of the market is too much. There is a hell of a lot of argument amongst all sorts of organisations, commentators, journalists, proprietors, companies and so on, as to whether 15 per cent or 20 per cent, 30 per cent, what is right. It is a question for public and open debate.
Clearly, there is and has been for many years mounting concern about
domination of one particular area of the media by an ever smaller number of
organisations. What we have here is not just domination in one sector, it is
mounting an increasing domination across all the known current media sectors,
whether you are talking about TV news and film, radio and digital including
social media. The question is that the position of this particular company which,
albeit has split itself into two halves, is, nevertheless, predominating across all
of the four current major sectors, one, two, three and four, and coming up very
rapidly to position 3 on the fourth area which is digital. The Sun, in particular,
its online news is proliferating in terms of usage.

So, the question in any society has to be is it right for one organisation to be
able to predominate not just in one sector, not just two, not just three but four
and to be able to use and promote its facilities, its services, its news, its
influence including its political influence right across all four sectors.

I know I am not giving an answer on it should be no more than 25 per cent or
no more than 15 per cent. That is, clearly, an issue for society and society's
representatives to consider. We are saying that, at the minute, it is too much
and it is going to get more if 100 per cent is owned by the company.

A. (Mr Peretz) If I might add just something on the law here. Plainly, the position
is a much more complicated one than you come across when you are dealing
with traditional competition law analysis. You can see that from the Court of
Appeal judgment for ITV/Sky because you have got internal plurality as well as
external plurality. Any sort of market share starting point is going to be no more
than a first step among many for a number of reasons; (1) because you have
got to look at internal plurality; (2) when you have looked at that, you have got
issues such as the effect that one provider has on setting the news agenda of
another, which is going to be very difficult to capture in any sort of figure. That
makes the job of assessing what the threshold is extraordinarily difficult
because there just is not anything you can attach a figure to. It is conceptually
impossible to come up with a single figure that captures everything.

What I think one can say is a matter of law from that which is in the sense of
partly discomforting and partly comforting for you; what is slightly discomforting
is that you do not have much of an anchor to hitch anything to; what is
comforting is that it would be quite difficult for anybody challenging you to say
that you have got it wrong. One would imagine that the courts would see the
problem and would give you a very large measure of discretion in deciding
where the appropriate point was.

One shortcut that you should certainly resist - and I hope you have already
reached this view - is the shortcut that Fox are pointing you towards, which is
to say 2003 must be regarded as a benchmark for sufficient plurality. There is
something plausibly tempting about that argument because they say this
regime was set up in 2003. Parliament, in that context of setting up that regime,
was also at the same time, for the first time, effectively, allowing cross-
shareholdings between television and newspapers, therefore, parliament must
have assumed that there was sufficient plurality otherwise it would not have
done that. That is the argument in a nutshell.

That, however, falls down when one begins to think about it, first as a matter of
statutory interpretation. I would certainly submit that a court would not accept
that as an argument for very good reason, which is that it involves reading a
whole lot into a statute that simply is not there and it involves, in particular, an
assumption about parliamentary intention that, if one stands back and thinks
about it, simply is not justified.

MPs would have voted for the regime with all sorts of background assumptions
as to whether there was or was not sufficient plurality; but it would be perfectly
possible that an MP might have voted to set up the current regime even if he or
she thought that there was not, in 2003, sufficient plurality on the basis that,
according to that MP, any independent regulator looking at the market would
have found that there was not sufficient plurality and, therefore, cross-media
shareholding should not be permitted. The reason why that MP could square
voting for that but also voting for a more liberalised regime on cross-media
shareholding is that, in due course, perhaps when the market opened up, the
regime was then more open to cross-media ownership. When one thinks about
it, it is not a coherent account of parliamentary intention, what Allen & Overy
are putting forward in terms of the 2003 anchor.

The other reason why it is not a helpful -- more a self-evidently wrong
proposition is that, if you accepted it, it would force you into what actually is
quite a bizarre exercise; just trying to compare a quite different media market.
I think we are all agreed that things have change a lot between 2003 and 2017.
So, instead of actually looking at what the situation is now, it forces you into a
rather artificial exercise of trying to compare the market now with a quite
different market as existed in 2003 and drawing all sorts of strange
comparisons. It is, actually, entirely unclear when you read Allen & Overy's
submission exactly how they propose you do the comparison, and that, I think, is a pretty fundamental criticism of what they are saying.

I hope that is helpful.

Q. (Mr Bamford) I will come back to the point around agenda setting and influence. There are questions related to that I just wanted to pick up on a couple of points around the extent of online news and its development, not directly related to 2003 but essentially around to what extent have online-only news outlets changed the news landscape. We have seen websites such as BuzzFeed and so on develop into investigative journalism. Huffington Post is another. The Independent has now gone online only. I wondered whether they have, in your eyes, any meaningful impact on plurality?

A. (Dr Schlosberg) It is interesting that you mention those three because they are, certainly in terms of the UK news market, probably the only three significant online-only players in terms of their reach and consumption. In terms of their agenda influence, I think it is pretty clear that, although BuzzFeed has invested, as you say, to some degree in its investigative reporting, most of the news that it produces, most of the "exclusives" that it produces, which is one of the first things that you look for in terms of agenda-leading power - news origination - BuzzFeed do a lot of that but most of it goes nowhere. Most of it is just a headline that is purely aimed at and consumed by BuzzFeed readers. Much of it does not even qualify as news. An awful lot of their lead headlines on any given day are things like listicles, or very entertainment-focused or so-called "weird news" formats. It does not really compare to the kinds of agenda-setting power that comes from covering UK social, political, economic issues that can
have, potentially, a real bearing on the way in which people vote, for instance.

I think that is the first thing to say.

I think it is the same for The Independent. The Independent, in terms of the way its business model has shifted after it ceased its print edition, has very much been part of that game. People call it "clickbait news" or "click-driven news" where it is very much about giving prominence to newsgathering and articles that are very easily and prominently shareable in a digital context.

Huffington Post is an exception there based on the research that we produced. We were actually genuinely surprised by how prominent they come out as agenda influences, but that really is only one single additional competitor to legacy national press and broadcasters. Indeed, if you look at the enduring dominance in that research that is still enjoyed by News UK and by other leading brands, I think that the landscape really has not changed in any sort of material way as a result of new entrants.

A. (Mr Carusone) If I could just add one thing on that. What you might think of as investigative journalism, we are currently experiencing a very different version of that. It is relevant to your question because, Justin would agree with all that, there is a lot of that out there that is good and it is coming from these places.

There is another strain of investigative journalism though that was born around 2010. It was a response to this market. It was borne out of a relationship between the influence that Fox News had and its larger network of conservative media that they are connected to and incentivising false journalism, false reporting under the guise of being investigative journalism.

The first instance of this was a gentleman by the name of James O'Keefe who
masqueraded as an organiser. He had people pretending to be prostitutes. They
would go to an organising group and they did these sting videos. They
would then heavily doctor them to make the organisation look very bad and
then feed them to Fox News. So, it would be an exclusive. They would publish
it but then they would have this synergy with Fox. What happened from that is
it really borne out -- he did a series of those stings and when you went back
and did a forensic review of their video you would find that they were heavily
doctored, oftentimes months or weeks after the damage was already done.
What that did is it was not just him; it actually incentivised an entirely new
cottage industry of individuals coming up.

Where I think it comes full circle is an example of this; this woman by the name
of Lila Rose. She runs an organisation called Live Action. It is an anti-
reproductive health group. She runs a news website around this as well. She
has, basically, an exclusive synergy with Fox. She had a similar patent. She
started doing these investigative hits on the reproductive health community. As
a testament to how the power is - and I think you can connect that to the
agenda-setting role that these groups play - is that Media Matters did an
analysis of all of the reproductive health content that was consumed by
Americans in 2016; it was almost 76,000 articles. Live Action, a place that just,
basically, popped up, was in the top three of the outlets consumed on that entire
topic. Someone who had no prior experience in journalism, who was, basically,
doing very targeted kinds of, essentially, political ads under the guise of being
journalism had managed to carve out a very definitive voice on an issue in less
than two years. I just want to put that out there as an example because that is
the kind of secondary influence that who you bring on and the incentive
structures you make could create in the market.

Q. (Mr Bamford) Just to pick up on the online point, you were talking about
BuzzFeed and the types of articles; 21st Century Fox put it to Allen & Overy in
their submission that The Sun, for example, when you focus down to The Sun
news articles, they are far lower than Ofcom put forward as The Sun’s reach in
consumption and online. Is that the same for other previous print providers
such as the Daily Mail or even some others?

A. (Dr Schlosberg) Yes, I think that is a fair point. It is clear, for example, if you
look on any given day at the home page of the Daily Mail or The Sun and
compare it with the front page of the print edition, that there is a marked
divergence there. In plurality terms, the first thing to say is the Daily Mail and
The Sun digital editions, although it is a different type of news, it is still much
more what we would call news. They do not tend to produce the kinds of things
like listicles as part of its headline content, the kinds of lifestyle tips and guides
that you will find on BuzzFeed, for instance. It is still news. It is more celebrity
focused, it is more entertainment focused but it is still news.

The key point I think is that, we need to look at the combined leverage that
comes from different measures of agenda power. And we are not just talking
about News UK or News Corp here. The Daily Mail is also very prominent. It
has one of the biggest newspapers; in fact it has the biggest newspaper if you
include the Metro and the Daily Mail and the Mail on Sunday, and the biggest
web property in terms of page views. The issue, the really difficult and heart of
the matter from a plurality assessment, is to look at these different types of
influence that can be leveraged across the market. There is a certain type of influence that you have to attribute to simply being in the top three, based on page views, web properties, even if some of your news is more celebrity than political. There is a certain type of influence that you have to attribute to that, not exclusively. There is a certain type of influence you have to attribute to having a wholesale presence like Sky does on commercial radio; a certain type of influence to the agenda-setting power of newspapers, et cetera; even a certain type of influence to the ownership of Storyful, which is, for all intents and purposes, a monopoly social media newswire that services all of the leading news brands around the world, that is owned by News Corp.

All of that has to be factored in together. What is interesting to me about this merger is that it completes the one piece in the puzzle that Murdoch is missing and that is television, and not just television itself but the kinds of audiovisual news that Sky is able to leverage across platforms. If you add that into the mix then you get something that is unmatched even by the BBC in terms of the sheer breadth and scope of that potential influence.

Q. (Mr Bamford) To pick up on that, and it is for yourself or for anybody else here today, what is it about adding TV which would give a greater degree of influence? What is the property around the TV broadcast that changes things?

A. (Dr Schlosberg) The first and most obvious thing is we still live in a society where television is by some measure the most consumed news medium. We also have to take account of the fact that, if you look at the audience for television, it is very much transcendent across demographics, across the kinds of niche, polarised, fragmented readerships and audiences that you sometimes
find in the digital context. So, in that sense, television has what we could call a "super-layer" of agenda setting power. It may not be the first to originate stories. It may take much of its cues, as I think the research suggests, from newspapers like The Times, like the Daily Mail, et cetera. But what it does is it amplifies the salience of that agenda. It is the thing that really, I think, is the key to the agenda seeping into the public consciousness; that is, the range of issues, the range of problems affecting society that people think about at any given time.

Q. (Mr Bamford) Just taking that influence point, particularly across the media platforms, and thinking it through into times when the media has, essentially, led to changes in public opinion or government policy, are there particular campaigns or issues that you would like to highlight where the media has been at the forefront of, essentially, leading either public opinion or government policy, obviously, in particular relation to print or broadcast?

A. (Dr Harris) Media policy is a very good example. I do not think it is necessarily what you were thinking of.

Q. (Mr Bamford) No, that is fine.

A. (Dr Harris) The reason it is a good example is that it is very clear that there is a self-interest. So, a business person is entitled to have a self-interest but the role of regulators is to prevent that becoming pernicious and acting against the public interest. The way that it operates in respect of their business interests is not one that engages the democratic system by changing public opinion but goes direct to the politicians.

If you take the area of non-broadcast media regulation, we have a quite remarkable situation where there were three -- well, two and a half
regulators - regulators - or authorities were lied to, and it is accepted they were lied to, by News Corp. The police, the CPS and the Press Complaints Commission, which is not really a regulator, it was a sham but it was used and they said, "We listen to the police". The police said, "We saw what the Press Complaints Commission said". That is how they managed to do it. That is why regulators should be - and I am sure they are - very cautious about accepting at face value what is said by this organisation.

As a result of what happened over, as I say, a decade of failed corporate governance, a decade that failed to prevent an extensive criminal conspiracy, failed to detect it, failed to investigate allegations and then failed to admit to it, a public inquiry was set up because politicians recognised - this is on the record - that, because of the power of the press, they were vulnerable to being accused of being influenced. So, they gave it to a judge. The judge came up with a very clear view; a view that the Murdochs - and others, but the Murdochs in this case - implied that they supported while they were on the stand and then, as soon as the inquiry finished and as soon as the media coverage went away, they have - and this is set out in our evidence to of - used their newspapers in particular to run a campaign, not to change public opinion which has not changed one inch on the necessity to have independent regulation of newspapers but to change government opinion. It has been done non-transparently, and this is the allegation that has been made about the way the Murdochs operate with back-door meetings and multiple meetings with advisers, with ministers and with very senior ministers and prime ministers in exchange for the support that they are legally allowed to give through their
newspapers to the party in power.

You cannot get, I think, a better example of the way the Murdochs are willing to use their power both transparently in newspaper campaigning and non-transparently in meetings with politicians, (again against the recommendations of the Leveson Inquiry that these should not happen non-transparently), to affect public policy not only in a way that goes against consistent public opinion -- and I would argue, and I think the majority of parliamentarians would argue and certainly the judge, Lord Justice Leveson, did, against the public interest but also in their own interests. It is a case in point. This is what is quite remarkable: they are still campaigning against the completion of a judicial inquiry that is only aimed at getting to the truth of what happened in this regulatory setting.

My view is that the CMA should try to establish how it is that that is consistent with a genuine commitment to any standards at all in that setting which is clearly translatable to this setting.

A. (Mr Davies-Coates) If you were to take the front cover of the Daily Express after the Brexit result was given, then, arguably, the whole Brexit campaign is an example of influence. They described it as "the world's most successful newspaper crusade", of course at which, Murdoch haters apart and despite the fact that the Independent Press Standards Organisation, IPSO, has got the editor of The Sun and whatnot on its board -- the fact that they had The Sun headline, "The Queen backs Brexit" is one of the few examples where IPSO has said, "Actually, a front line like that is a bit wrong", especially given the context of an upcoming referendum. The editors of the paper, the next day
after that judgment, more or less said, "We would do the same thing tomorrow because it sells papers. It is the business".

A. (Mr Gopsill) An interesting and telling area in which Murdoch media have led the way is the very deregulation of this industry and, indeed, of course, of other industries. The remit of Ofcom since 2003 has relaxed a lot and Ofcom is seen by many people as a deregulatory organisation. As an example, you could look at the ways in which ITV has been able to draw back from its original obligations to produce news by constantly referring to Ofcom and Ofcom has always allowed it.

This ties in with the hostility to the BBC as a competitor. The Murdoch media quite blatantly use their media power in their commercial interest by attacking the BBC. They are not the only ones but it is actually The Times, interestingly, with regard to what Justin was saying about the influence of The Times. The Times is the paper that has led the way in attacks on the BBC. All the other papers do it because, of course, they want to diminish the BBC’s market because of their own commercial interest. That is absolutely clear. That is why we are here today.

It is interesting as well that James Murdoch, in advocating the case for this merger to go through, said that it shows Britain is open to business because we will be needing foreign investment, overseas corporations spending money in Britain after Brexit. I looked at that headline and I thought, "It is largely thanks to you that we have got Brexit in the first place".

A. (Ms Zoyab) I would just like to cite an example from the US of active meddling in promoting a political conspiracy which proved to be completely untrue. This
is an example that straddles both media plurality concerns as well as broadcasting standards concerns. This is a story about a murdered young man called Seth Rich. He was a Democratic National Committee staffer. According to the police, he was murdered as part of a botched robbery.

On 15 May, as part of Ofcom's fit and proper review, Fox, despite broadcasting in the UK for 14 years, did not have a compliance policy and produced one on 15 May. On 16 May, in the US, they put out the story about Seth Rich, which proved to be completely false. The story that they put out was that he was, in fact, the source of the leaks and not the Russian government. Fox promoted that story online as well as on television - their anchors repeated it for six days - and then later withdrew that story at the end of the week.

This is an example where they promote a certain story because it supports their political agenda, which they then, ultimately, had to withdraw. This is another example of how certain stories are pushed because there is a broader agenda to promote a certain viewpoint.

A. (Mr Babbs) I thought it might be helpful to offer a couple of examples of where that influence has not necessarily been something that, for 38 Degrees, we felt - it suited us more because, obviously, we are in a similar business of seeking to influence political events, from a different agenda.

A couple of years ago, we were running a long-running campaign against the then Osborne plan to cut tax credits. Ultimately, The Sun came behind that campaign and very shortly after that there was a government U-turn. It is situations like that where I have got quite a useful vantage point where I can see the political context in which that campaign is happening; securing
meetings with MPs, MP by MP around the country; supporting our members who were being affected by that cut to put their experience to MPs. We certainly felt like we were making progress and making a difference during that long campaign. It is truly transformative when national newspapers like that swing behind it. Certainly, to refer back to your earlier question, the sense of how much closer that brought us to victory within the 38 Degrees office was several notches higher than it would have been if BuzzFeed had backed out campaign. Similarly, going back a few years earlier, one of the campaigns that first brought 38 Degrees to people's attention was a campaign against a proposal to sell off England's public forest estate. Again, that was a campaign that had a lot of public resonance. We thought we were onto a winner but the point at which the Sunday Telegraph backed that campaign -- again transformative; the hearing that you were able to secure for politicians.

I offer those as examples. I do not think this is just sour grapes that we might disagree with the agendas that the media has. I think there are occasions for 38 Degrees where we see the media's influence lining up with our members' agenda. Nonetheless, it is a huge level of influence and it is, obviously, problematic, the accountability questions that pose, even when we might be on particular occasions quite glad of the outcome.

Q. (Mr Krumins) Can I, just for a moment if possible, depersonalise the specific owner from the structural plurality question? I am hearing a lot of evidence which seems to suggest, in this digital market we are now in, very few media properties have the ability to set agenda. Consequently, I am not clear in my mind if you are saying that we cannot have cross-media ownership in this
market in that Sky News could not be owned by any of the three leading
newspaper groups because of these issues, or in some way these are specific
Murdoch issues. All the evidence, if I listen through it, seems to be that,
because there are now so few major groups, any kind of cross-media ownership
would be inappropriate and would remove plurality from the system, which
would be a bad thing.

Am I overreaching there or is that not what you are saying?

A. (Dr Schlosberg) No, not at all, actually. I can genuinely say that if this was a
proposed merger between the Telegraph Media Group and Sky or even
between the Guardian Media Group and Sky, and the Guardian has a very
strong digital presence, I would be raising exactly the same alarm bells and
exactly the same concerns. If it was a merger between Northern & Shell or
even Trinity Mirror and Sky I probably would not be raising as many concerns.
I would still be concerned, but I think that, looking at the overall agenda picture
that brands like the Mirror or the Daily Express have, particularly the cross-
media influence, it is not on the scale of The Telegraph, the Guardian and
certainly not of News UK titles.

Q. (Mr Krumins) And the Daily Mail group?

A. (Dr Schlosberg) The Daily Mail I would include in that as well, absolutely.

Q. (Mr Krumins) In the concerned or not so concerned?

A. (Dr Schlosberg) Gravely concerned. There are almost divisions that you can
quite neatly draw here. I think the Daily Mail probably is in a division on its own,
second to News UK; The Telegraph and the Guardian below that; then I think
Trinity Mirror and Northern & Shell below that. I think News UK is a special
case even though I would raise similar concerns in respect of others, precisely because their potential influence registers high in so many different contexts. The fact that they own properties like Storyful, for instance, the fact that The Times and The Sun, in conjunction, have a very large scale reach in both print and increasingly online, and that fact that the Times in particular has that prestige factor in terms of its agenda cueing.3

A. (Mr Wilks) Plus the radio.

A. (Dr Schlosberg) Yes, but the radio is Sky.

A. (Mr Davies-Coates) Just to say, of course, it is not just the agenda setting and influence that cross-media ownership has; it also helps them kill the competition because they can and do cross-media promotions, so they all promote each other. Murdoch's newspapers promote --

Q. (Mr Krumins) Sorry, just to be very clear, I do not want to hear the word "Murdochs" -- and I am thinking structurally, across-media ownership. So, whatever party you talk about -- that is the question I am having.

A. (Mr Davies-Coates) Yes, that is the point.

Q. (Mr Krumins) Are you all of the view that we are, effectively, in a regime right now where you cannot have cross media ownership by the top three newspaper groups and a 24-hour-7 rolling news channel?

A. (Dr Schlosberg) Absolutely.

A. (Mr Gopsill) This has long been recognised. There are limits, and I cannot remember off the top of my head - whether Justin can - there are regulatory

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3 Clarification provided by the MRC following review of the draft transcript.
rules preventing newspaper groups owning ITV.

A. (Dr Schlosberg) There is a 20-20 cross-media rule.

A. (Mr Gopsill) That is right.

A. (Dr Schlosberg) I think that there are real problems with cross-media ownership. That has only really become clear as a result of the phase 1 review. Prior to the phase 1 review there was this prevailing assumption that things were getting better. There was even talk of the 20-20 rule being relaxed. I think that landscape, that whole agenda is completely changed now. I think it is very clear that there is real concern about cross-media mergers, particularly between leading newspaper brands and television.

A. (Dr Harris) The reason for that perhaps is, because there is a concern, that whoever owns the newspaper, if they have a particular strong view, which they are entitled to have, then that can be transmitted even through the existing broadcasting standards code into the way news is presented, as you are well aware. If someone threatens to only appoint or tolerate an editor who has a pattern of selecting stories that fit a particular approach, which is legitimate within the Broadcasting Code if the output for those stories is then duly impartial, then one has to consider the risk of whether the sorts of people who own newspapers and want to own newspapers are likely to impose an editor and trust an editor or only engage an editor who they can trust to do what they can within the scope they have through story selection. Then I think you must, if you are in any doubt about the presumption you make, look at the record. The record in this case is that you have got someone who has been willing, as the fate of James Harding and, going back, Sir Harold Evans, has
demonstrated, and who has -- it is his right and power within newspapers - done that. I suppose, in regulation, you have to look at the track record to try to assess the risk of that happening over and above the generic question that you raise.

Q. (Mr Bamford) To pick up on that point around story selection and the idea of whether the Broadcasting Code would prevent or mitigate any issues with respect to Fox -- let us take it, to Fox News, essentially, becoming what Sky News would -- the shift, shall we call it. I think the Campaign for Press and Broadcasting Freedom highlighted a couple of incidents around which Littlejohn had some shows that were put into Sky and then removed.

A. (Mr Gopsill) Yes, there was that one.

Q. (Mr Bamford) I think it was two that you put forward.

A. (Mr Gopsill) It was Littlejohn twice.

Q. (Mr Bamford) I just wondered whether you could talk through that with respect to (a) the application of the Broadcasting Code to those and also (b) the appetite for a UK audience for that type of story, which I think is what you highlight in your submissions.

A. (Mr Gopsill) That is a very good question, because there was not an appetite for it. I dare say perhaps 30 years ago in America people would have said the same. We are looking to the future now and we are looking to the record of Fox in the US and what they would do to Sky if they wholly owned it. I do not think there is any question. It is all about what they would like to do, and neither is there any question about how they would go about it. There would have to be changing taste; but there is changing taste. The media
market is transformed by the internet, by the collapse in numbers and I think actually of authority of newspapers, and the coarsening - if I can use that word; it is a horribly elitist word - of politics. This is not a political statement but right-wing populist politics in the USA have been imitated to a lesser extent so far in Britain. We do have the apparent popularity of very right-wing commentators like Katie Hopkins and Kelvin MacKenzie and people like that who are the sorts of people who would be presenting nightly programmes on Sky and making very controversial remarks that would, as in America, get into the news agenda. This is precisely our concern. That would be a huge shift in the whole of the British media because the British media depends on a balance between regulated broadcasting and deregulated press.

If you want it in one sentence, the News Corporation Fox view of TV is to run it like what we think of as a newspaper. The values of Fox are the same values as News Corporation's British newspapers; exactly the same. The value and quality of our media depend on that balance. The balance has been slowly eroded over the years. The concern is that, if this merger goes ahead and the regulators are unable to constrain Sky in the way it took up that kind of broadcasting, then, effectively, the regulations would be a dead letter.

A. (Mr Wilks) I would like to just add something as well. Another way in which the Broadcasting Code is not sufficient beyond story selection is that it seems, from Ofcom's analysis of some stories including the Seth Rich one which Alaphia just mentioned, which Fox later withdrew -- is that, if a TV station recategorises shows from news to some other format, they call it a panel show or something else, basically, to entertainment, then due impartiality and the other parts of the
Broadcasting Code no longer apply. Ofcom wrote to the secretary of state in
August, saying as that was not a news programme it was not a problem, despite
the fact that it was on Fox News which you would think would be a clue to
consumers, plus Sean Hannity is one of their news presenters as well as does
these panel shows. So, that is another concern. There are several ways and
several loopholes I think in our Broadcasting Code which could be exploited.

A. (Mr Peretz) Just a very short legal point really, commenting on an opinion of
Lord Pannick which is annexed to the Fox-Sky submissions; a slightly elderly
one now - not necessarily a criticism of it but, basically, ten years ago. Really,
it is an attempted riposte to the proposition that -- the argument is that the
Broadcasting Code is not an answer for concerns about plurality because it
does not deal, effectively, with questions on story selection. What the Pannick
opinion does is it posits some examples of cases where one would say that an
issue of story selection or non-selection was fairly clearly contrary to the
Broadcasting Code. I think the example it gives posits the idea of a day on
which the home secretary publicly criticises the conduct of the prime minister.
Perhaps in 2010 it was regarded as a highly unusual event; perhaps it is slightly
less unusual in today's rather odd climate. But a story of obvious salience that
any broadcaster that did not cover it you would look at that broadcaster and
say, "Hang on, that must be a breach of the due impartiality provisions" because
non-coverage of that story could only be for reasons of wanting to promote a
particular political agenda. In that case, a decision not to cover it would be
because there was support of the government.

That is clearly right but it is actually a very limited point. The difficulty here in
story selection is it is really a question of agenda. It is those day-to-day choices or week-to-week, year-to-year choices that broadcasters have to make as to whether, if you are dealing with social security, you cover benefit fraud or you cover failure to deal adequately with poverty. The choices you make as to the balance of stories -- take that as an example -- is, clearly, pretty political. If you want to promote one type of story, the benefit cheat story as opposed to the poverty story or vice versa, you are making quite a big political statement and your coverage will be pretty politically inflected. The Code does not really deal with that.

A. (Mr Davies-Coates) I just want to succinctly quote James Murdoch on this point. He said at his MacTaggart lecture:

"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."

Q. (Mr Bamford) To pick up on the reference to James Murdoch, given Fox's current shareholding in Sky and James's position as chairman and his previous position as CEO for a number of years, how does this transaction increase the Murdoch's ability to influence Sky News? Open question.

A. (Dr Harris) I have one example but others will have more expertise in this. 61 per cent at the moment could stop the serial sacking of the editor of Sky News by the 39 per cent shareholder or at least has a chance of doing so, because that is an overt act that is obvious to Board members, would be controversial and could be prevented. It is through the appointment of an editor prepared to do the rather more subtle story selection than the example that
Lord Pannick gives in his opinion which is one of the ways to create a problem in that news channel while not breaching the Broadcasting Code. There would be no opposition to that, independent directors notwithstanding, or certainly significantly less opposition in 100 per cent-owned entity.

There may be other areas where it would have to be more subtle, but that is a clear-cut area, the serial sacking of the chief editor of the news channel.

Q. (Mr Bamford) Just to clarify that, currently, we have Fox which is 39 per cent owned by the Murdoch Family Trust and has, as I understand, a majority of independent shareholders on its Board. It then owns 39 per cent of Sky which again has a majority of independent shareholders. Is it the double layer which is preventing it happening now or is there something else?

A. (Dr Harris) I think others ought to now deal with the point you are implying which is that there is a dilution of Murdoch.

Q. (Mr Bamford) I am merely raising it as a question. There is no implication.

A. (Dr Harris) Yes. What your question implies, obviously, is that there is, somehow, a dilution of Murdoch influence through the percentage and there are other people here who can deal with that first aspect of what you are positing.

Q. (Mr Tutton) Can I just pick up on this shareholding point. It is, obviously, critical to what we are looking at in one sense. What is the change? The change is 39 per cent to 100 per cent. The question is what are the implications of that - it could be various - in particular in terms of the questions we are looking at. I am just trying to get my head around at the moment -- leaving aside the views of independent directors or shareholders, forgetting about what they might
individually think, I am just thinking about the overall incentives here. If we were looking at a merger case we would look firstly at the ability to do something then the incentive to do it and then the effect of doing it. There is a sort of similar thing in the back of my mind at least here; what are the incentives on either independent shareholders or independent directors in the context of Sky at the moment to do something particular?

All I am thinking about really is Sky News is a very small part, in fact a negative part in obvious terms of the value of Sky. Insofar as the shareholders are, basically, there to protect the value of their shareholding and Sky News may be losing [£] or whatever, in what way do you see incentives on shareholders or independent directors to block the selection of any particular editor of Sky News?

A. (Mr Flynn) If I may just contribute here, I think both our submissions and Ed Miliband's submission outline a contrast between the shareholder structures and the directorships of, for example, 21st Century Fox and Sky. We are arguing that, in the case of the boards of Fox, the supposed independence of the directors is nominal or non-existent. We give plenty of examples in our submissions relevant to that and, in addition, give the example of supportive sympathetic shareholders, obviously, who have a history of voting in support of Murdoch's position.

By contrast - and Ed Miliband's submission goes into this in some detail - there is evidence that, in Sky's case, the opposite is true; the 61 per cent of shareholders and the boards actually do function to restrain the influence of the Murdoch Family Trust through Fox and its current influence over Sky.
Q. (Mr Tutton) I accept that and I have read the evidence concerned. You point out the example where the 61 per cent, effectively, supported the removal of James. That seems, to me, consistent with what shareholders would normally do. At that point, you could argue - and I am not arguing but you could argue - that James Murdoch was a liability to the value of Sky as a plc. What I am trying to focus on is, in the context of media plurality and broadcasting standards, why those independent shareholders should be a positive influence.

A. (Dr Schlosberg) If I was an independent shareholder I would be particularly concerned about James Murdoch or Rupert Murdoch having greater control over the flagship news carrier of Sky precisely because of the legacy of the phone-hacking scandal, the legacy of corporate scandals in embroiling Fox News in the US; that show that, actually, where the Murdochs do have that kind of influence over news, it is bad for business reputation. So, I can perfectly see how that incentive could operate as one example.

A. (Mr Gopsill) The dilution of the ownership of Fox is not represented by the actual shareholding because, as you know, the Murdoch Family Trust has, effectively, controlling interest. So, there is no dilution of the control of the company there I do not think.

A. (Dr Harris) Can I just make two points on that question? It is very clear that the Murdochs' view, as they are entitled to hold, is that regulation in this country is a constraint on their ability to run their business as they wish - for what they would see as a legitimate way - of maximising profit. That is what businesses do. So, if you accept the hypothesis that regulation and the requirement to observe the Broadcasting Code is a constraint and that public interest deems it
to be a necessary constraint in this country, then if independent shareholders
are just looking at the bottom line, they may well go along with the view that
one could do what one can to get around without breaching - which would be
bad for business reputation and, therefore, for the bottom line - that area. So,
I do not think one can rely on people who are there only to look at the interests
of shareholders, to uphold the public interest that the regulator must. I believe
your decision here is an opportunity.

The second example is dealing with the question of whether the Murdochs have
39 per cent of the Murdoch Family Trust. It is to look at the decision by News
Corporation - 39 per cent owned by the Murdochs through the Murdoch Family
Trust - to appoint Rebekah Brooks as the person in charge of corporate
governance of what is now News UK. By any standards - and I do not believe
this is subjective - by any standards in business, that was an astonishing
decision to appoint someone who, by her own admission, at best her defence
was that she was too incompetent to prevent the wholesale criminality, the
thousands of victims and the, so far, $500 million and more in losses as a result
due to legal costs of that position. In no other business would it be remotely
rational to reappoint someone like that, responsible, on her own case, for those
losses to a position of responsibility. Did the 61 per cent influence outside the
Murdochs and the Murdoch Family Trust do anything to prevent that? They did
not prevent it. If that is the effect of the fact that it is only 39 per cent Murdoch
through the Murdoch Family Trust ownership then the record shows that there
is no basis to consider that there is this genuine commitment to broadcasting
standards that can be safeguarded by other shareholders in this mix.
A. (Mr Flynn) If I may, we also have an interesting example in Sky Australia where the ownership has gone recently from 33 per cent to 100 per cent and we would submit that you begin to see the Foxification of Sky Australia as the direct result of that change in ownership. It is analogous to what is happening in the current merger--

Q. (Mr Bamford) Recognising the time and recognising that a number of the submissions touch quite heavily on a genuine commitment to broadcasting standards, I would like to move on from plurality and enable us to have enough time for those views to be aired.

In moving to that topic, the first question and one of the fundamental questions would be what interpretation do you think we should give to the words "genuine commitment" in relation to attaining broadcasting standards in the UK? I will open that up.

A. (Mr Wilks) I could have a go at that. We have seen what the secretary of state and you and others have written and we have sent our submissions in. I think you were -- in several of those places it talks about the attitudes and the culture which underlie specific behaviour. I think that is what you have got to interpret. Ways in which to do that are to look at not only patterns of behaviour but when misconduct is seen and raises its head do executives wholeheartedly try to understand what is going on and address it or do they look the other way where convenient and exhibit in some ways a wilful blindness if there are incentives to do so for commercial gain? I think it is possible to look in terms of, particularly, Fox News at the on-screen performance and the way in which Fox News interacted with British regulators when breaches were alleged. It is also
possible to look at the slew of other behaviour as we talked about and see that
that has not been properly, wholeheartedly and genuinely addressed.

A. (Mr Carusone)  The one thing I would focus on there is the "genuine
commitment" language because I think there is a lot of room about what
broadcasting standards are and what is appropriate there. The genuine
commitment piece is the one that is critical here because, at its core, it feels
like the through-line for a lot of these conversations by example.

When I think of genuine commitment I think of what are the structural and
governance aspects that guide their decision-making when it comes to
producing and publishing, reporting and content. That transcends hard news
and moves into the commentary as well. What are the standards here? It is
not about one-off mistakes or other issues; the question is do they do anything
from a structural perspective to actually address these things.

Moving outside of the debatable content around the politics, I get to the clearest
things which are conflicts of interest. Time and again, we see consistent issues
with respect to conflicts of interest. We have a mass shooting in the United
States; we have people on air who are spending hours a week talking about
who are being sponsored by the Concealed Carry Association. They are,
literally, being paid by the gun lobby as Fox shows and never disclose it.

Or we have somebody on Fox Business, a host, not someone you would think
of as a commentary or opinion person, who is giving business and financial
information that people are relying on, that was being paid for and had an
interest in a particular fund. He, literally, had a client that he was on air talking
about.
Or you have on-air personalities - they call them "commentators"; they are staff members - who are being paid by political campaigns, not individual but issue-based campaigns, talking about that issue, never once disclosing it. What happens is you can identify these things. Sometimes they will cure it; maybe a small slap on the wrist or a sanction. Or they will nuance it so the next time it goes on there might be a minor disclosure.

If I was thinking about the most obvious example, let us say, do they have a genuine commitment to not having people that are being paid to say things or, at the very least, identifying and disclosing their interest. That has been going on for years. At face, that alone is the single greatest concrete example of the much more nebulous and difficult things to get into. I do not see a genuine commitment because, if there was, it would not keep happening.

A. (Mr Gopsill) Your question was answered actually by the secretary of state who wrote to 21st Century Fox in September defining the commitment as:

"A company must have an internal culture that takes compliance issues seriously, ie a commitment to attaining broadcasting standards objectives."

She also wrote, following the reconsideration by Ofcom of the broadcasting standards question over the summer:

"The company's corporate governance failures have called into question the existence of an internal culture that takes compliance issues seriously."

And so on. Obviously, you have this reference:

"The representations raise concern that various actions and
alleged failings -- the product of a corporate culture that does not prioritise the need for regulatory compliance."

The difficulty people have is this is all understood by people in the workplace. I have worked in the media myself and sometimes the outside think there are great rows about things and people slamming doors and refusing to carry out orders and so on. That does not happen because everybody working in media, who are taking decisions every second, work that happens at great speed, absolutely know the context that they are working in.

Over a period of time the culture of an organisation can change. There is a strong record in News Corporation companies of bullying. There have been some sensational tribunal cases you could look up about journalists who have been bullied into leaving the company and have won large sums. There have been cases - more than in any other industry as far as I am aware, in any other company - of journalists resigning their jobs in protest of editorial interference in their work. If you want, we could send you half a dozen examples of that.

We would also like to suggest, because you did ask us earlier, things that you might follow up yourselves in the course of the inquiry that the CMA has the ability to do that we do not. One of those is we would like to propose that you look into the immaculate compliance mechanism set up by Fox News in the USA in the process of this inquiry by Ofcom, where Ofcom criticised them for not having a procedure. Miraculously, about a fortnight later they had one. It has never been published, so nobody knows what it says. We would suggest that that is one thing that the commission might follow up.

Related to that is how Fox News came to take the decision to withdraw their
service from UK broadcast, which again was made as a commercial announcement. If there is any way that you have of investigating how that happened, that would be useful.

Further related to those are the attitudes of the staff. I do not know whether anybody has spoken to the journalists working at Sky or at Fox in Australia, as our colleague mentioned; their experience of working for Murdoch and the changes and their fears of changes in the future.

One last sentence is I would be prepared to say a little bit more about Australia if there was time. We have done a submission which sets out the reaction to that. It is a very telling case and quite uncanny that it is happening at the same time.

A. (Dr Harris) You set out your own answer to your question so far in paragraphs 50 - 55 of your issues statement. I agree with the approach you take in various places in paragraphs 51 - 55 and I will not go through them here. I will not repeat what I have said, that it is not just about genuine commitment to broadcasting standards; it is can you be confident they have a genuine commitment to broadcasting standards when you cannot be confident that they have and have shown by their record a genuine commitment to standards generally.

There is one point I would like to pick up because there is an issue with the way Ofcom dealt with this. That is paragraph 55 where you talk about:

"We will need to assess the extent to which the record of compliance in one field of regulation can read across into another."
I have already made the point, if you look at their press interests compared to their broadcast interests, that they have actively campaigned against having effective independent regulation in the press area and, indeed, they have actively campaigned against the truth coming out in respect of their own conduct. The fact is that they are unregulated in the press area. The Independent Press Standards Organisation is not a regulator. Lord Justice Leveson, not me, said, to be a regulator, you have to have investigations and the power of sanction. In three years, the organisation funded and controlled by the large press has done zero fines and zero investigations. So, it is a zero regulator. Ofcom were wrong to classify it as a regulator. It is the same as the Press Complaints Commission which was never a regulator and admitted that. It is on the record as admitting that and was brought down by the single act it did, which was to believe what they were told by the owners of News Corporation.

My final point is about -what I have been bogged down with in the last week. I believe you have got enough in the public area to say that there is not a genuine commitment, based on the points I made in my opening remarks. But there are documents that are now available through disclosure in the court process; those that have been deployed in open court. I will be sending you a list of those that I know have been deployed and mentioned in transcripts. It is just taking a long time to collate.

There are some that the party, 21st Century Fox, has control of. The Murdoch Family Trust have control of the documents that they have disclosed which have led to the pleadings that are on record in the allegations of the most
serious thing you could have in the regulatory sphere, which is concealment of wrongdoing and destruction of evidence. Those have not been previously prosecuted. They are live legal issues and you must - and I am sure you will - within the ability that you can, get what is in the public domain, what has been deployed in court and ask the relevant party, under whatever undertakings you need to give, for those documents that they have disclosed that are not yet in the public domain. I believe they will tell a story, both sets of documents.

A. (Mr Peretz) I will just make a very brief point, that is a legal point about the interpretation of section 58(2C)(c):

"... genuine commitment to the attainment in relation to broadcasting of the standards' objectives set out in section 319."

It is important to look carefully at those words. It does not say, "genuine commitment to remaining compliant with the rules laid down by Ofcom" or some such phrase. It is much broader. It is attainment of standards' objectives. One might say it a teleological thing. It is aiming at -- it is a commitment to particular public policy objectives, which goes wider than merely sticking within the black letter of the law and not getting caught in particular violations.

There is a flavour in the Fox-Sky submissions of saying, "Provided we have complied with the strict letter of our legal obligations and provided that we intend to comply with the strict letter of our legal obligations and just remain on the right side of the line, then you cannot possibly say that there is an issue under paragraph (c)". I would say that that is not correct because the language goes wider. It is aiming at the much broader question of is this organisation committed to the public policy objectives set out in paragraph 319. To
paraphrase, it requires a commitment to the spirit of the rules as well as to the letter of them.

Q. (Mr Bamford) Just to move that forward from the discussion we have had around genuine commitment, one of the phrases which Ofcom use within their phase 1 report is an "identifiable link" between corporate governance failures or failures in other media areas outside of broadcasting standards. I would like to have your explanation or your views on what is that identifiable link between those corporate governance issues and not having a genuine commitment to broadcasting standards.

A. (Ms Zoyab) As an opening comment to that I would say in the answer that again, the secretary of state, in her 12 September letter, says what she found that disturbed her was that the corporate governance failures are a product of a corporate culture that does not prioritise compliance. The identifiable link really is that, if you look across all the corporate governance failures that we and others have highlighted in our submissions, you will see a pattern of the initial response which starts off with denial; then it changes into a cover-up; then it changes into a reluctant admission of guilt; and then there are public statements made, "We have dealt with the problem. The problems have gone away", and details about compliance mechanisms, but they do not actually work in practice. A change of control means that the Murdoch Family Trust will, obviously, have much more influence over these corporate governance structures.

In the most recent example of something that happened over this last weekend, The New York Times broke a story about how there was a $32 million
settlement made by their leading presenter, Bill O'Reilly, on Fox News. He made this $32 million settlement with another contributor at Fox News. This happened at the time when Fox was publicly claiming that they had set up a mechanism of rapid escalation of material issues to the Board. So, that was the centrepiece of their argument, that they had proper governance reforms. If we look at what actually happened, the Board seems to have shown no scepticism; seems to have asked no questions about what the settlement was about; how much, et cetera. So, what we see is that they did know about wrongdoing. They did not ask the relevant questions. On the other hand, they claimed here in the UK that they had this mechanism of rapid escalation. They have provided no examples of how many such instances were, in fact, rapidly escalated, et cetera.

Really, the overarching theme here is that the serial failures of corporate governance do not provide us with any confidence that they are genuinely committed to broadcasting standards. The issues of fairness, impartiality, et cetera, the corporate governance record here does not give us any confidence in that.

A. (Mr Davies-Coates) I would go further. I would say there is hard evidence of a lack of a culture that takes compliance issues seriously. To me, it is just clear as the day is day and night is night that 21st Century Fox does not have an internal culture that takes compliance issues seriously.

THE CHAIR: The key point, and this is what Ofcom said, is that these are all in a non-broadcasting standards context and, therefore, Ofcom said, "You have got to find this identifiable link". All of the alleged corporate governance failures were
in a non-broadcasting standards context.

You are making the assumption you can read straight across but we want to make sure; the question is there an identifiable link?

A. (Dr Harris) I think there are three. Two I mentioned in my opening statement, so I will not go into them in detail. The common theme is the people in these organisations knowing that they can act with impunity because of the record of granting impunity by acts of omission and commission in, for example, the non-broadcast setting. I have given you examples. You can break the law and get welcomed back. You can cost the company $500 million at best through incompetence and be reappointed, after having got a payoff, to head corporate governance again; an unbelievable decision by any standards. And the creation of a culture of not respecting regulations. Those are the two broad ones.

Obviously, we would say the common theme is who makes the decision. In an organisation where there was not a personality, that makes no pretence not to be making the decision; does not pretend to have a macho, "I am the boss. My decision goes", and to say, "I take responsibility", as they did when they claimed to take responsibility in relation to the Fox News scandal, then this may not be such an issue. But here, it cannot be denied, again objectively, that there is a decision-maker or a family that makes decisions. A record - because a record cannot be undone - of James Murdoch, which was set out and was criticised both by Ofcom in 2012 and by Leveson, and has not been remedied, is something that cannot be escaped from.

My fear is that Ofcom seem to say, "We take their assurances at face value". I
am sure Ofcom have their reasons for saying that, but everyone else who has
done that in the past has fallen foul -- the police, the CPS, the Press Complaints
Commission. Ofcom dodged a bullet in 2010 because they were about to
approve the takeover then and it only failed because of the work of investigative
journalists at Dispatches, the BBC and the Guardian. It was not the regulators
that exposed the problem there. There is enough evidence out there to show
that the truth has not been reached, particularly in respect of cover-up. I am
not arguing that the sins of 1998 - 2006 - and, indeed, perhaps to 2011, as the
disclosure seems to be revealing - are what is decisive here. It is the cover-up
of that, the failure to admit and the continued suppression through concealment
and destruction, which are the broad terms used in the litigation, that should
give serious pause to any regulator as to whether they can take these matters
at face value. If we were in a position where the Leveson Inquiry had been
completed and the truth was out there, consequences had been taken, people
had been sacked or not, depending on the findings, then you would be - I do
not envy you - in a much more confident position to make a judgement.

Q. We cannot hypothesise on Leveson part 2.
A. (Mr Gopsill) I would just like to skip through four suggested quick answers to
the question, just one line each.

The power that 100 per cent ownership have is the appointment of executives
and also it being both management and editorial. In editorial, there is the power
to skew the news agenda in line with the company's politics and commercial
interests. The example of the denigration of the BBC is one that I gave earlier.
Secondly, they can cross-promote their activities for commercial advantage in
editorial copy, editorial material. We have put in a submission on that from Professor Jonathan Hardy, who is not here. I think we can leave you to read that. It is a very forceful document.

Thirdly, there is the denigration of journalists’ standards that actually relates to what Evan was talking about, which is the way that the company betrayed its staff in defiance of the first rule of journalism which is you protect your sources. They destroyed evidence that would have incriminated the executives and gave all the evidence that incriminated their staff to the police, and their own staff were prosecuted, as you know, for phone hacking and for bribing public officials. That is a journalistic question which is absolute anathema to all journalists.

Finally, the interesting question about the women. Some people have said, “What is the connection between these harassment cases and editorial?” The question is we are talking - and it is quite difficult sometimes - about the culture and style of an operation and what people understand and what they do. To me, it does not surprise me at all that they have had all these sexual harassment cases because of the way that Fox treats women. Even the intellectual women presenters such as Megyn Kelly, very intelligent and forceful people are dolled up with big hair and high-heeled shoes and lots of cosmetics on, lots of make-up. We do not do that in Britain. That is just the sort of thing that would make the difference.

A. (Mr Babbs) I think it is probably worth highlighting that, when we did the public opinion poll and we asked people if Rupert Murdoch and his company can or cannot be trusted to have a commitment to fair and neutral reporting at Sky
News, only 5 per cent said that Rupert Murdoch can be trusted. Obviously, you have the challenge of trying to move beyond subjective assessments of what constitutes a genuine commitment but I think it is surely relevant in that how little perception of that commitment there is. It is hard to imagine, if only 5 per cent of the public believe he can be trusted, that 100 per cent of his employees -- that the culture within a wholly owned Sky News would be 95 per cent different from that public perception of just how little trust there is in Rupert Murdoch to uphold broadcasting standards.

Q. (Mr Tutton) Can I just put a brief follow-up on that one? I hear what you are saying. How does that reconcile with the survey evidence on trust of different newspapers and whatever? My memory, from looking at the stuff which you will have seen too, is, for instance, The Sun does not rate very highly. The Times, though, rates relatively highly. Murdoch, as you said or it has been said, has a relatively free hand in influencing Times editorial policy and whatever, but some of the papers within that are relatively high trust. How does that reconcile?

A. (Mr Babbs) I must admit I do not have those figures in front of me. I have to say that we do quite a lot of polling on trust and a 5 per cent trust record is much lower than I have ever seen for anything else.

Q. (Ms Chambers) Could I just ask if all the 95 per cent were they ‘do not trust’ or were there any ‘do not knows’?

A. (Mr Babbs) There were 27 per cent do not knows and 68 per cent cannot be trusted to have a genuine commitment to fair and neutral reporting.

A. (Dr Schlosberg) I think this issue of trust is an important one. Clearly, Ofcom,
rightly, looks at trust in, for example, the BBC as an impartial broadcaster and the relative trust in a newspaper like The Times versus The Sun and takes that into account in terms of impact. But we do need to qualify that, because decades of research into media influence have really produced nothing but a very murky picture about the way this kind of influence operates.

This speaks to the earlier question about influence over public opinion. We cannot say for certain how influential, for instance, The Sun’s editorial is over the way people vote in elections. We know that The Sun has never "lost" an election, or at least since Murdoch has taken ownership, including the last election, but that is not necessarily evidence prima facie of influence. The key question I think in respect of this review is to look at this from a question of risk and the risk that that influence can translate through all sorts of ways; through the trust and respectability of a brand like The Times, but also the mass readership base of a brand like The Sun and cross-platforming base. Platform reach of a brand like Sky News. All that has to be taken into account.

Trust is a funny thing because, in some ways, if you look at newspapers, few people trust newspapers or say they trust newspapers to tell the truth, and the media in general; those levels of trust are extraordinarily low. But if you look at the levels of trust done in research in terms of what we call "gatekeeping trust", ie trust that these major titles will print the news that is worth telling, that is newsworthy, that is actually surprisingly still very high and, in fact, in many ways, higher than ever as we get this noise from social media, that people are actually increasingly searching for those major news brands as signals of news authority and credibility.
A. (Mr Carusone) I just would like to go back to the identifiable link between the
sexual harassment and the governance that is there and broadcasting, because
I do think that there is some much more concrete crossover. One is that, up
until the Roger Ailes allegations, there was a policy at Fox News where women
were not allowed to wear trousers. That was a broadcasting policy. That is
one example, and that was on air as well. Most of these studios are not on site.
If you are in a satellite studio, the make-up artists that do the make-up in these
studios, they will do it for multiple programmes. They will do it for CNN and
NBC because they tend to share these spaces. If you go in there, you will find
that the make-up artists get no instructions from any of the other places that do
make-up except for Fox which actually gives them a set of concrete guidelines
for how to do make-up for women including assessing their eyelashes and
putting on fake ones if not -- and there have been instances of women who
have had their make-up done and being rejected and having to go back and
have it redone again because they did not meet what would be required for on-
air appearances. [\[
It was not about what they were saying or commitments to not disclosing
conflicts of interest or ensuring accuracy but there were concrete policies
regarding how women looked on air. That is not the case across otherwise. I
do not think it is possible to decouple that broadcasting standard from the larger
governance failures that are there at Fox News.
One button, just to show the shamelessness of this and also how they can
weaponise this information is that, in the 20 days since the Harvey Weinstein
sexual harassment allegations and reports came out, Fox News devoted well
over 12 hours of coverage to that. They devoted 20 minutes to Bill O'Reilly over the course of seven months, 16 of which came from one person, one host on Sundays. The reason I illustrate that is because they are willing to engage in this from a broadcasting perspective when they think they can weaponise it against a prominent liberal or to push a larger agenda about Hollywood but, other than that, even when it comes to atoning or just avoiding this entirely, given their background, they did not. So, I do think that broadcasting component is relevant.

A. (Mr Wilks) I have a couple of other thoughts on the identifiable link as well. One, the Seth Rich story which we mentioned before about the DNC staffer who was blamed, in Fox's coverage, for leaking the Clinton emails to the Russians; that story, in a court deposition, there are texts showing that the Republican donor who helped organise that story had taken the story to the top levels of the White House. I think it may even mention the president in the text. This was a politically convenient story to put out in May this year at the time when Trump was under pressure.

The newsgathering methods - again in court it is alleged that the quotes by the public investigator were concocted - intercepted with the political agenda and led to sloppy material being broadcast which was then retracted by Fox. I urge you to look at the internal inquiry that Fox has supposedly done into that and to see what were the internal debates, who authorised that in terms of the methods, the selection of that story, everything about that story. I think that would be very clear and illustrative.

A. (Dr Harris) And who has been fired.
A. (Mr Wilks) So far, we have not seen any evidence that any sanctions or incentives have been given to prevent that happening again. That is a tight intersection of broadcasting standards, what people see on their screen and the newsgathering methods news selection. The phone hacking, obviously, was an example of newsgathering methods crossing ethical and legal boundaries. I think these things intersect pretty tightly on several occasions.

Q. (Mr Bamford) Just to follow up, a slightly narrower point around this link between corporate governance and Brexit. We have a copy of a public advice that you gave to Avaaz in relation to the European Intervention Notice right at the beginning of this whole process, and it is still ongoing. In that advice, you recommended, as I understand it - and correct me if I am wrong, please do - that Avaaz should seek for the secretary of state to have an additional public interest test related to corporate governance because the advice felt that the single broadcasting standards public interest test did not enable the full remit of the corporate governance to be brought in. I wonder whether you could talk through that.

A. (Mr Peretz) You have the advantage over me that I have not brought advice with me and do not have it in front of me. I am now trying to remember precisely what I said. There are clearly wide corporate-governance concerns, and it is always neater if your position is, as Avaaz’s position is, that those corporate-governance concerns of themselves should be sufficient to refuse permission for the proposed transaction to proceed. It is always neater if that is your concern, to have that concern addressed as such rather than, as it were, to try
to shoehorn it into another issue, in this case paragraph (c), because then you
have precisely the sort of discussion that we are having and you have precisely
the sort of submissions that are made by Fox and Sky saying, “This sort of stuff
is all of very limited relevance, and you should not really pay much attention to
it”. One could predict that that was bound to happen.

I say that slightly tentatively, because I cannot remember quite how firm I was
on that advice, but the question of whether there should be a new ground is not
to say that it would be completely impossible to deal with those concerns under
the head in paragraph (c), and since paragraph (c) is where we are that is what
you have to look at.

A. (Dr Harris) It was raised in Parliament by Lord Puttnam in an amendment to
the Digital Economy Bill, and the minister from the dispatch box assured him
that his concerns around corporate governance could be dealt with, implied
would be dealt with, by the regulator under the heading of genuine commitment
to broadcasting standards. The same answer was given in the Commons, I
believe, to Tom Watson when he raised the question, or it may have been Ed
Miliband, from the Secretary of State. You are presumably not bound by that,
but it was reassuring to those of us who might have taken the Avaaz advice
further in challenging what the Government was doing, to know that they were
satisfied that the specific concerns set out in the amendment that set out
corporate governance could and would be dealt with under this heading.

A. (Mr Flynn) Which is one of the reasons why we did not pursue it; we accepted
the reassurances from the Secretary of State and I think also from Ofcom that
they would deal with this adequately in the broadcasting standards ground.
Q. (Mr Bamford) Just to come back to the issue around Fox News’s broadcast within the UK, to pick up that area of genuine commitment to broadcasting standards, I would welcome your view around Ofcom’s approach to regulating the output of non-UK-focused news channels such as Fox in terms of due impartiality and due accuracy, taking into account the contextual factors such as size and expectations in the audience that Ofcom highlight both within their initial report and their responses to the Secretary of State. I would welcome your views on those points.

A. (Mr Gopsill) We had discussed this, and we feel they are a little too generous sometimes, in that Ofcom has said – I do not have the text here – that the due impartiality relates to the size of the audience and the nature and expectation of the viewer, which allowed them to regulate Fox. I think we noted that there were certain other stations from other countries who were not given that benefit. It is not material to this case, but I think if you have broadcasting standards and you enact them in regulations empowered by an Act of Parliament then you really should adhere to them.

A. (Mr Wilks) I would add that while there may be some adjustment for the scale of the audience if you have 65,000, 70,000-odd average viewers per week that is a reasonable scale and it is a professional, large broadcasting organisation that should be able to understand and comply with these kinds of standards. There seems to be a different approach where you see community radio stations being shut down for some things that are arguably similar to the breaches that Fox was being asked to account for. In the submission that we have brought here, it looks as if Ofcom was too quick to close down or to decide
not to look further into potential breaches, including quite serious things like around the Referendum. Broadcasting content that could influence voters while the polling booths are open is a very clear and simple rule.

It is also partly, I think, the attitude of Fox in responding to those serious concerns that is worrying, a feeling that they do not need to take that seriously.

So, it was good that Ofcom did then ask them to bring forward a policy for UK compliance. I think it was surprising, frankly, that it had taken so long to notice that they lacked such a policy, and I feel that over that time of 16 years it would have been good for Ofcom to have done some more proactive monitoring of segments of Fox to see about compliance from random sampling rather than just wait for complaints from audiences, many of whom may be Americans living in this country who do not necessarily know about the standards that should apply or how to talk to Ofcom.

A. (Mr Davies-Coates) I would add that whilst Ofcom I think massively underweighed the relevance of Fox’s compliance record here in the UK and said because they are small and everyone knows they are bad it does not matter that they are bad they have, to be fair to them, also raised concern about Fox’s responses to their numerous breaches, for example about the distinction between advertising and editorial content. Ofcom said it was “concerned by FNN’s suggestion that using devices such as “lead-in and lead-out bumps and teasers” is sufficient to ensure a distinction between advertising and editorial content.” Fox had said, It clearly was not an ad, because we did not end the show and then start the other show.

The responses that Fox routinely give to Ofcom about their breaches are very
indicative, again, that they do not take compliance and regulatory stuff seriously, certainly not as a commitment before the fact. They say, you are enforcing that too strongly, and actually, this thing we did was fine, we thought. That case I read was referenced in John Hardy’s submissions.

Q. (Mr Krumins) If can just take a step back, we have put this, rightly, very narrowly on the question of Sky News, governance, plurality and those sorts of measures, Sky is a very large company, and Sky News is a very small piece of that. It is a loss-making piece of that. Fox have made a public offer, and particularly with the way the register is changing, that shareholders would look to vote for whatever it would take for that offer to be made formally, we could be looking at scenarios where Sky and Fox may decide to shut Sky News down as a condition of the offer passing through. So, from a plurality perspective, Sky News would disappear. I just wonder if that is a good outcome here, because both parties are in their right to do that – it would take away the concerns about plurality in terms of where Murdoch was – alternatively whether there are mechanisms that you could put in to protect Sky News to address these concerns, or alternatively would a scenario be where you shut Sky News down and Fox starts from scratch in the UK with a news channel, rehires existing people and rebuilds something? Could you just perhaps comment on commercial scenarios that may happen here?

A. (Dr Schlosberg) The first thing I would point out is that I do not think that we can just take the fact that Sky News is a loss-making unit of Sky’s total operations as meaning that it has no commercial value to Sky. I think that institutions and individuals invest in news very often as loss-leaders. That is
true historically and is arguably increasingly the case.⁴ BuzzFeed is a very
good example. If you look at, for instance, the statements of BuzzFeed’s CEO
about why it is that they have chosen to invest in a form of news that actually
does not offer much if any immediate return on their investment, the reason is
simple: because news is a very, very powerful way of generating traffic and
volume and attracting eyeballs in the converged media landscape. From that
perspective, it is a very, very powerful way of leveraging a brand.

From a commercial perspective I think even talk of closing down Sky News,
which is a very, very significant brand for Sky, is purely hypothetical. I think
when you take into account the approach of the Murdochs their investment in
news assets is very often not only to look at loss-leaders in terms of leveraging
brand value but potentially, I think, for all intents and purposes leveraging at
least political access if not political influence. I think we are talking about an
extraordinarily unlikely scenario, and I think that there is nothing about the
statements of 21st Century Fox throughout this review or indeed News
Corporation in the 2010 review that suggests to me that there is any remote
possibility that that would be the post-merger result of this deal.

A. *(Mr Gopsill)* Not to mention the political clout that running a 24-hour news
station gives you.

Q. *(Mr Krumins)* I am trying to make a commercial point here. The commercial
deal is in the billions of pounds. I can shut this channel down, and then I can
come back in six months or a year, rehire the exact same team and relaunch

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⁴ Clarification provided by the MRC following review of the draft transcript.
under a different name. The News of the World disappears; The Sun on Sunday appears. I am just asking you to think about the disaggregation of the two, because Fox is the owner of a multi-channel platform that is highly profitable in the UK. It is not what we are really looking at here in terms of these plurality concerns; it is what happens with news, and so just taking a commercial perspective, think through that scenario and just consider how you would like to see that regulated.

A. (Dr Schlosberg) I think what you are touching on is potentially the whole issue of undertakings. I think really the first thing that we would say on that is that the undertakings that have been offered so far, which have basically been about preserving Sky News as a condition of this deal and, secondly, notionally preserving its independence through the independent board, are wholly inadequate. I agree with you that if the decision was made as a result of this merger going ahead that Sky News should be shut down that would be a detraction from plurality, but, as I say, it is a very hypothetical thing to consider, because I do not believe that it is either in the commercial interest of Fox to do that or the political interest of the Murdoch family trust.

Q. (Mr Krumins) It is the commercial interest of doing the deal at all or doing the deal without Sky News. Those are the two scenarios that you are looking at as Fox.

A. (Mr Gopsill) If you are hypothecating that Fox would set up a channel in Britain; we are discussing whether Sky News, which has a good compliance record, can be trusted if it was under 100 per cent Murdoch ownership. There is no way that Fox News would get a licence from Ofcom.
THE CHAIR: I think we are getting into a little bit of a hypothetical area.

Q. (Mr Krumins) But, in terms of your point, is there a regulatory framework that does work?

A. (Dr Schlosberg) You mean in terms of undertakings?

Q. (Mr Krumins) Undertakings, yes, or however you term it.

A. (Dr Schlosberg) My simple answer to that question is no, and the reason is – and this really speaks to a lot of the questions that you have raised today, and it is a common issue between broadcasting standards and plurality – we have to consider here the way in which power operates in these types of organisations. If Sky News was to be notionally structurally separated from the merged entity but there was still even the slightest lever of control or slight connection structurally to Sky, we have seen decades of research in the fields of industrial organisation, psychology and sociology that shows that the way in which power diffuses and operates in these large-scale corporations and organisations is in fact rarely through formal structures and formal levers like shareholder votes et cetera, but actually it is much more through informal channels.

The real risk here is that actually the result of this transaction is not that the Murdochs will be able to have direct editorial interference in Sky News; the real risk is they will not need to have direct editorial interference. The real risk is that simply the symbolic significance of Sky becoming wholly under the auspices of a Murdoch-controlled organisation will be translated into internalised pressures, influence and self-censorship on the frontline of their newsroom.
THE CHAIR: We are seven minutes away, and I think we have had a very full
discussion on a lot of issues on which we are very grateful for your input. So, I
am really going to say, are there any burning points any of you want to make
that you have not made, not just repeating what you have said? I assure you
we have taken notes and it is being transcribed.

A. (Mr Davies-Coates) I only have a small one, on the commercial influence.
What incentives would shareholders have for Sky becoming like Fox? Fox is,
in stark contrast to Sky News, highly profitable. That is one clear incentive that
people would have to move in that direction and possibly explains why that is
exactly what has happened in Australia.

The other thing I am touching on is what Justin said about the unspoken --
Harold Evans and Andrew Neil in their Leveson testimony – and/or the
politicians, actually – both spoke to the palpable influence that Murdoch has
when he is in the room or when he is there, not having to hand things down
directly. Within hierarchical organisations people like to please their bosses.

Q. Any more burning points? It is 4.55 pm, and, as I said, I think we have had a
very good discussion, but I offer you this opportunity for a one-minute point.

A. (Mr Wilks) Just a suggestion that in line with the commercial logic that you are
talking about there, it is a tricky question to think about what undertakings could
possibly work and insulate Sky, and I will not take that up now, but I urge you
to look at the practical ways in which the merger would take place in terms of
training, compliance, incentives, hiring, firing and all of those sorts of things,
which speak to the culture of the larger fish buying up the smaller fish, and to
imagine what the culture would be both in terms of offscreen and onscreen
compliance. For me, there are worrying signs, and of course we leave you to
draw your own conclusions, but I would just want to point you to some
suggestions that we have made in a couple of our briefings, particularly the
corporate-governance one about documents that you may want to obtain,
particularly on the other side of the pond, to build a full picture.

A. (Dr Harris) You rely to an extent on what you are told by the parties, clearly, to
the extent that you can trust them. My suggestion is that you look at what they
have said in places where they do not believe they are being heard. There was
an example of this where Rupert Murdoch spoke to News Corporation, Sun,
staff, he was taped, he said very clearly a number of things – and there is a
record and a tape that Ofcom should have transferred to you – he said, “We will
get revenge on the police, because they followed up what we asked them to
do”, and he expressed disdain for normal regulatory practice. People when
they do not realise they are being recorded and they are not on record give
away a lot of what their position is. He has had every opportunity to rebut, to
apologise for or to reject what was said, but he believes it, I believe, he is proud
of it, and that is probably the reason why it has never been taken back.

A. (Dr Schlosberg) Just to directly follow that, the Commons Select Committee
report from 2012 pointed out that corporately News of the World and News
International misled the Committee, they would have known they were not
adequately truthful and they failed to disclose documents that would help
expose the truth.
Q. Okay. I think I will draw it to a close there. Thank you all very much for coming in. You have given us a lot of material, and you have also given us a lot of material in writing, which, I assure you, we are reading. Thank you very much.
### Key to punctuation used in transcript

| -- | Double dashes are used at the end of a line to indicate that the person’s speech was cut off by someone else speaking |
| ... | Ellipsis is used at the end of a line to indicate that the person tailed off their speech and didn’t finish the sentence. |
| - xx xx xx - | A pair of single dashes are used to separate strong interruptions from the rest of the sentence e.g. An honest politician – if such a creature exists – would never agree to such a plan. These are unlike commas, which only separate off a weak interruption. |
| - | Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way – or was there? |