

21ST CENTURY FOX/SKY MERGER INQUIRY (PHASE 2)

Summary of hearing with 21st Century Fox on 30 November 2017

Background

1. 21st Century Fox (Fox) stated that in its view Sky Plc (Sky), with the right partner, has a bright future. Part of Fox's rationale for the transaction is that it wants to help ensure Sky remained relevant and competitive. Fox added that the best way for this to be achieved is for Sky to be wholly consolidated into Fox, where the company had begun when it was founded.
2. Fox stated that there is unprecedented global competition in the media landscape and the best way for Sky to move forward as a business is to be integrated with Fox. Fox stated that it wants to acquire Sky because it is a good company that is well run but requires greater investment. Fox added that the transaction is not a synergy-driven deal but is complementary as both businesses fit together and enhance each other.

Understanding the Murdoch Family Trust and its control of Fox

3. Fox advised that the Murdoch Family Trust (MFT) is a holding vessel for the benefit of the Murdoch family and that each of Rupert Murdoch's children share equally in the assets of the trust. Each of Mr Murdoch's adult children have appointed a director of the MFT's trustee. Fox stated that decisions regarding the MFT are made by the trustee and not the beneficiaries, and that the trustee has a duty to act in the best interest of the trust itself.
4. Fox stated that in its view a number of third-party submissions to the CMA had confused the MFT, which is a trust vehicle, with the Murdoch family. Fox explained that it is important that the MFT as a shareholder in Fox is distinguished from individual Murdoch family members.
5. Fox explained that members of the Murdoch family who were directors and/or executives of Fox had roles as fiduciaries to the company and were obligated as directors and executives to operate in the best interest of shareholders.

6. Fox stated that the correct legal framework for the consideration of control was either ignored or misrepresented in a number of the third-party submissions to the CMA that have been published.
7. Fox stated that the relevant legal framework is outlined under section 26 of the Enterprise Act 2002 (EA02). It said that the EA02 only describes three types of control, namely, material influence, de facto control and controlling influence. Fox added that another level of material influence that fell short of de facto control was not a distinction relevant under the applicable legal framework.
8. Fox stated that pre-transaction the MFT already has material influence for the purpose of the EA02 over Sky via Fox. Fox added that it is undisputed that the degree of control MFT has over Fox will be unaffected by the transaction.

Views on media plurality in the UK

9. Fox stated that leading economic literature confirms that news providers are influenced by the demand side more than ownership. In Fox's view this is in line with some of the third party submissions and evidence put to the CMA regarding the position of various news outlets.
10. Fox stated that the influence of traditional media has been diluted and redistributed among various news providers. Fox attributed this to the rise of social media and how it is used, for example for breaking news. Fox added that multi-sourcing and new entrants to the market have also increased the dilution.
11. Fox stated that it is natural for politicians to seek to communicate with their voters. Fox stated that this is why politicians cultivated relationships with the media, in all its forms and added that this is something that takes place across the globe and not solely in the UK. Fox added that politicians have a natural inclination for their messages to be amplified. They now have a wide range of other media tools and techniques to achieve this, often more effectively.
12. Fox said that it is difficult for the closeness of the relationship between politicians and the media to be legislated for; although this can be addressed in part by disclosure protocols and good ethics. Fox also noted that since issues of the closeness of the relationship between politicians and the media were raised in the Leveson Inquiry, there has been an explosion in communication channels (such as social media and smart phones) that are incredibly effective to communicate directly with audiences (and voters, as far as politicians are concerned).

13. Fox stated that the UK landscape of news provision and consumption is highly plural in 2017 and that we are in an era of ultimate plurality where choices, sources and access are multiplied even from five years ago.
14. Fox stated that news thrives and will continue to do so. It stated that there is a wide spectrum of what is defined as news and how it operates.
15. Fox stated that the lack of public interest intervention in previous media mergers indicated a sufficiency of plurality at the time of those mergers. Fox stated that since then, there had been an advent of new voices getting traction and changes in consumption arising from the use of social media.

Genuine commitment to broadcasting standards

16. Fox stated that it has a genuine commitment to both the letter and any valid and reasonable interpretation of the spirit of the Ofcom Broadcasting Code (the Code).
17. Fox stated that it has never been sanctioned by the communications regulator, Ofcom, for any of its UK held licenses. Fox stated that it takes culture, governance and corporate responsibility very seriously and it would ensure high standards were upheld, at both Fox and Sky post-transaction.
18. Fox stated that in its view, the best way to measure a genuine commitment to broadcasting standards is to look at the record of the broadcaster. Fox noted that it has never been sanctioned by Ofcom, and that its record as a licence holder, and that of James Murdoch personally as CEO and then Chairman of Sky, evidences its genuine commitment to broadcasting standards.
19. Fox stated that in light of Fox News being found to have breached the Code by Ofcom on the day of the EU referendum in the UK (as a result of broadcasting a programme discussing the impact on US markets while polls were open), it made a decision to ensure Fox News was not aired in the UK on the day of the 2017 General Election to ensure compliance with the Code. Fox stated that Fox News was simulcast from the US and therefore could not be changed for a UK audience.
20. Fox stated that the broadcasting of Fox News in the UK was stopped because it had been making a loss. It also stated that the channel appeared to not appeal to the UK audience as the audience numbers were low, so it did not make commercial sense to continue broadcasting Fox News in the UK.]
21. Fox stated that compliance with relevant broadcasting regulations is the lifeblood of broadcasters.

22. Fox stated that any serious charge, globally, is brought to the attention of its General Counsel, who in turn ensures that it is raised with the Audit Committee.
23. Fox stated that its Group General Counsel is in touch with and meets periodically with the other general counsels across the Fox company globally. The Group General Counsel encouraged others to share any concerns as early as possible and reminded them that everybody is responsible for compliance.
24. Fox stated that it takes a proactive approach to compliance but that as is the case with other broadcasters it is inevitably necessary to be reactive. Fox explained that in trying to be proactive it looks more broadly at the entire scale of issues that are raised and strengthen its compliance. Fox stated that once it found out that some News Corporation reporters had engaged in illegal behaviour, in 2012, it reacted by forming a Compliance Steering Committee, adopting 12 new policies addressing a wide array of risks that would affect the company and ensuring that they were implemented and monitored worldwide.
25. Fox stated that sexual misconduct of varying degrees of criminality and/or consequences is a problem that has been seen in all walks of life and across industries, companies and organisations. It stated that actions taken by Fox and within Fox News to investigate the matter seriously and to hold the perpetrators accountable at the highest levels of the business had, it hoped, set a high bar for any institution grappling with similar wrongdoing.
26. Fox made clear that this type of behaviour has no place in Fox or at Sky and that it would continue to work to enhance its culture and provide a safe, productive and inclusive workspace for everyone.
27. Fox stated that when the allegations against Roger Ailes came to light, it undertook an investigation with external counsel. Once it became apparent that the allegations held merit Fox removed Roger Ailes from the business. Fox added that other senior officers who had a duty to upstream such issues, but had not, were also exited from the business.
28. Fox stated that its board was not made aware of the settlements made by Bill O'Reilly in 2002 and 2004 (the latter of which reportedly related to sexual harassment). Fox said that Mr O'Reilly's settlements would have been handled by the individual himself and that Fox is not aware of the actual amount of settlement other than what has been reported in the press.

The merged entity post-transaction

29. Fox stated that it had anticipated regulatory intervention on the media plurality public interest consideration. Fox added it had not anticipated any regulatory review to focus on the broadcasting standards public interest consideration in light of its record as a broadcast licence holder in the UK.
30. Fox stated that its board had a fulsome discussion about the management of Sky News post- transaction and this resulted in a board resolution. It was agreed that if Fox purchased Sky any changes to the editorial principles of Sky News or hiring and firing of the Head of Sky News would need to be approved by Fox's independent Nominating and Corporate Governance Committee.
31. Fox stated, in any event, that neither James Murdoch nor Rupert Murdoch had ever intervened in Sky's editorial independence, despite having had opportunity to do so during their time as CEO and Chairmen of Sky. It added that the Fox board has adopted a resolution to ensure the editorial independence of Sky post-transaction.
32. Fox added that its board has a majority of independent directors, meaning that the board resolution that guaranteed editorial independence at Sky, post-transaction, could not easily be overturned. Fox stated that the resolution entrusts oversight over the nomination of the Head of Sky News, changes to reporting lines and changes to the Sky News editorial guidelines to its independent Nominating and Corporate Governance Committee.
33. Fox stated that Sky News holds a positive track record within British media as a provider of impartial news, since it was founded (when Fox owned 100% of Sky). Fox noted that the current position of Sky News reflects James Murdoch's personal commitment to it - first as Sky chief executive and then chairman of the Sky board as he is currently. Fox stated that this will continue to be maintained post-transaction. It added that a diversity of views has always thrived at Fox.
34. Fox stated that there would be no rationale for members of the Murdoch family to align editorial lines between Sky (post-transaction) and News Corp newspaper titles. Fox went on to say if this were done in order to align with the interests of a separate company which the MFT also holds shares in (News Corporation), the decision would be subjected to legal challenge.
35. Fox stated that Sky News would continue to be broadcasted under the Sky brand post-transaction; this would not be changed.

36. Fox stated that because James Murdoch is not an independent non-executive Chairman of Sky, a variety of structures are implemented. This includes recusals from a number of decisions and all inter-company decisions. These recusals are implemented for all Sky directors who are also Fox directors. Fox stated that these recusals go beyond a personal recusal, all of those decisions at Sky were governed by its independent audit committee.
37. Fox stated that the relationship between James Murdoch as Chairman of Sky and Jeremy Darroch as CEO of Sky, and more generally Sky's top management, is candid and transparent. Fox stated that the dialogue between them involves discussions around board decisions, ensuring that management is supported but also effectively challenged. Fox stated that an independent board survey is conducted on an annual basis and no issues had been shown in the relationship.
38. Fox stated that its directors are required by US law to safeguard all assets of the business and that post-transaction, this statutory duty would extend to Sky and all of its business units, Sky News included. Any failure to exercise these duties would bring about legal action. Fox added that this would also bring about reputational damage which no competent business would want.