

Anticipated acquisition by 21st Century Fox, Inc of Sky Plc

Summary of provisional findings

Notified: 23 January 2018

1. The Competition and Markets Authority (CMA) has provisionally found that the proposed acquisition by 21st Century Fox, Inc (Fox) of the shares of Sky plc (Sky) that it does not already own (the Transaction) may be expected to operate against the public interest taking account of the need, in relation to every different audience in the UK or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (the media plurality consideration).
2. The CMA has provisionally found that the Transaction may not be expected to operate against the public interest taking account of the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (the broadcasting standards consideration).
3. These are our provisional findings. We now invite any parties to make representations to us on these provisional findings. Parties should refer to our notice of provisional findings for details on how to do this.

Reference

4. On 20 September 2017, the then Secretary of State, in exercise of her powers under Article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the Order), referred the Transaction to the CMA for further investigation and report by a group of CMA panel members (the Inquiry Group).
5. In exercise of its duty under Article 6 of the Order, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect will result in the creation of a European relevant merger situation; and if so

- (b) whether, taking account only of the media plurality consideration and the broadcasting standards consideration concerned, the creation of that situation may be expected to operate against the public interest; and if so
 - (c) whether (and if so what) action should be taken by the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation concerned.
6. It is ultimately for the Secretary of State, under Article 12(2) of the Order, to decide the questions set out in the Terms of Reference following receipt of the CMA's report. However, in doing so, the Secretary of State must accept the CMA's decision on whether the Transaction amounts to a European relevant merger situation and shall, in particular, have regard to the CMA's report when making his decision about what action he may take to remedy any finding that the Transaction may be expected to operate against the public interest.

Background

The Parties

Fox

7. Fox is a Delaware corporation whose shares are listed and traded on the NASDAQ Global Select Market. Fox is a global media company providing cable network programming, TV and filmed entertainment. In the UK, Fox's principal activities involve the licensing and distribution of audiovisual works for theatrical exhibition, TV and home entertainment viewing, and the wholesale supply of TV channels. Fox currently holds approximately a 39% stake in Sky.

Sky

8. Sky is a public company whose shares are listed and traded on the London Stock Exchange. Sky is an entertainment and communications company active in a number of countries through several subsidiaries. Sky retails pay TV services on a linear and on-demand basis to residential and commercial premises in the UK, Ireland, Germany, Austria and Italy. Sky also produces a range of TV channels that it makes available to retail subscribers on its own and third party TV platforms and supplies on a wholesale basis to other retailers.

9. Sky's portfolio of TV channels in the UK includes Sky News (a 24-hour news channel also available on free-to-air TV). As well as Sky News, Sky provides news content in the form of bulletins and articles on its website, and through social media. Sky also owns and operates Sky News Radio, which supplies news to the Independent Radio News (IRN) network of radio stations in the UK.

Related parties

10. News Corporation (News Corp) is a Delaware corporation whose shares are listed and traded on the NASDAQ Global Select Market. News Corp owns 100% of News UK and Ireland Limited (News UK, previously known as News International), which publishes The Times, The Sunday Times, The Sun and The Sun on Sunday (along with their respective websites) and owns a number of UK radio networks (including TalkSport and Virgin Radio UK).
11. The Murdoch Family Trust (MFT) is the largest shareholder of Fox and News Corp, holding approximately 39% of the voting shares in each. The principal beneficiaries of the MFT are Rupert Murdoch's six children. The MFT exercises its voting rights through its sole trustee, Cruden Financial Services LLC. Cruden Financial Services is managed by its Managing Directors, who are appointed by Rupert Murdoch, Prudence MacLeod (née Murdoch), Elisabeth Murdoch, Lachlan Murdoch and James Murdoch.

The Transaction

12. On 9 December 2016, Fox announced its intention to acquire the fully diluted share capital of Sky not already owned by Fox and its affiliates, increasing its existing shareholding from approximately 39%.
13. On 14 December 2017 Fox announced that it had agreed the sale to The Walt Disney Company (Disney) of certain assets including its interests in Sky (the Disney Transaction). Subject to the Transaction being completed, and if the sale to Disney completes on the terms proposed, then Disney would assume full ownership of Sky (including Sky News).
14. The Disney Transaction will itself be subject to regulatory scrutiny, its terms may be varied as a result and it is unlikely to be completed until well after our Inquiry has concluded. It is therefore uncertain whether, when or how the Disney Transaction will be completed. As Fox intends to complete the acquisition of the 61% of Sky it does not already own prior to the Disney Transaction completing, these provisional findings concern solely Fox's proposed acquisition of the shares in Sky it does not own and do not take into account the Disney Transaction.

Rationale

15. Fox's stated rationale for the Transaction is 'to achieve financial consolidation with a company in which it has held a substantial stake from the outset and that it will enable Fox to diversify its activities geographically, by acquiring a significant presence in markets where its activities in the TV sector are limited, and to diversify its sources of earnings towards more stable subscription-based revenues'.

Jurisdiction and counterfactual

16. We have provisionally found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation. This provisional finding is on the basis of Fox and Sky ceasing to be distinct enterprises within the meaning of the Enterprise Act 2002 (the Act).
17. We have also considered whether the MFT and Sky may cease to be distinct as a result of the Transaction. We have provisionally found that the MFT currently has 'material influence' over Sky and, while it will have greater control over Sky after the Transaction, this will remain at the level of material influence within the meaning of the Act and not amount to 'de facto' control or a 'controlling interest'. This means that the MFT and Sky do not cease to be distinct within the meaning of the Act.
18. We have provisionally found that the plurality of persons with control of media enterprises prior to the Transaction and the commitment to broadcasting standards prior to the Transaction is the most likely counterfactual.

Media plurality

19. The media plurality consideration is set out in section 58(2C)(a) of the Act as:

the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience.
20. The statutory question that we are required to answer is whether, taking account of the media plurality consideration, the Transaction may be expected to operate against the public interest.
21. The consideration of media plurality goes to the heart of our democratic process and as such is given particular protection in legislation. It follows from

this that parliament attached considerable importance to the preservation of the plurality of persons with control of the media enterprises. Having due regard to this need for protection we have carefully considered how we should approach our assessment of media plurality.

Assessment framework and potential harm from loss of plurality

22. We consider that reaching a view on whether the plurality of persons with control of media enterprises is sufficient post Transaction involves assessing:
- the actual extent of the control exercised and exercisable by the MFT over Sky and Sky News following the Transaction and over News Corp currently;
 - the impact of the Transaction on the existing plurality of persons with control of media enterprises serving a UK audience taking account of the increase in the extent of the MFT's control over Sky and Sky News; and
 - if there is a reduction in plurality arising as a result of the Transaction, whether the plurality of persons with control of media enterprises will be sufficient following the Transaction.
23. The Act gives the CMA discretion in construing the relevant audience for the purpose of the media plurality consideration. Our provisional view is that the relevant audience is a single national audience for news and current affairs. While the Act does not require the CMA to limit its assessment of media plurality to news and current affairs, there is a broad consensus to do so and we consider that this is an appropriate and practicable approach.
24. We have taken Ofcom's definition of plurality as the starting point for our assessment. Ofcom identifies two related strands to the meaning of plurality:
- ensuring that there is a diversity in the viewpoints that are available and consumed, across and within media enterprises; and
 - preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.
25. Following Ofcom's definition, the first potential effect of the Transaction could be to reduce the diversity of viewpoints available to and consumed by members of the public. The specific concern is that the Transaction might reduce the independence of Sky's news and current affairs content on Sky News, and this in turn could lead to a reduction in the diversity of viewpoints across the news and current affairs offerings operated by the media

enterprises controlled by the MFT, including Sky News, The Sun, The Sun on Sunday, The Times, and The Sunday Times.

26. Concerns about a reduction in diversity might arise, in particular, if the increased control that the MFT will have over Sky and Sky News following the Transaction means that the news and current affairs offerings of Sky News and News Corp could be aligned or pursue similar editorial positions or story selection following the Transaction. For example, the Transaction might make it more likely that Sky News and the newspapers owned by News Corp could take a similar approach on specific topics or issues, push certain stories, or downplay others. These concerns do not rely on full editorial alignment, but rather the potential for increased editorial alignment.
27. The second potential effect is that the Transaction could give the MFT greater control over Sky News, and that, in combination with its existing control over News Corp's newspaper titles, this could lead to too much influence over public opinion and the political agenda.
28. These two potential harms are closely linked. For example, if the Transaction were to increase the MFT's control over Sky News this could translate into a reduction in the diversity of viewpoints consumed by the public as a result of the MFT's increased control of Sky News and its existing control over News Corp. Equally, the increased consumption might be expected to increase the ability of the MFT to influence public opinion and the political agenda.
29. To assess these two potential effects, we have built on Ofcom's media plurality measurement framework. We have considered both quantitative and qualitative measures covering availability, consumption, impact and contextual factors. We note that Ofcom is clear that any assessment of plurality should not be focused solely on quantitative metrics but must instead take account of qualitative factors and recognise the complexity of assessing the plurality of news provision. We agree with this. We have sought to understand how practical observations and other qualitative assessments presented to us should be interpreted alongside quantitative evidence.
30. Our assessment requires us to consider whether, if there is a reduction in plurality arising as a result of the Transaction, plurality nonetheless remains sufficient. The media plurality consideration was introduced into the Act on the basis that competition law may not be sufficient to safeguard a sufficient level of plurality.
31. Given that parliament attached considerable importance to the preservation of plurality of persons with control of media enterprises, in order to support a healthy and informed democracy, we consider that concerns in relation to the

sufficiency of plurality may arise at lower levels of concentration than would be considered problematic in the context of a competition assessment.

32. We note that the Act does not provide a definition or measure of what constitutes sufficient plurality or a sufficient plurality of persons with control of media enterprises. Furthermore, there is limited existing guidance and Ofcom's measurement framework does not establish a benchmark for a 'sufficient' level of plurality.
33. We consider that our assessment needs to be undertaken by reference to the current market and political context. We think that the assessment of sufficiency in this context needs to take account of two key factors:
 - first, the MFT's position following the Transaction, as the person with control of News Corp and increased control of Sky and Sky News, in relation to the two core elements of plurality – diversity of viewpoints consumed, and ability to influence public opinion and the political agenda. In this context, we have considered the availability, consumption and impact of the viewpoints consumed by audiences in the UK over which the MFT has control; and the strength of the MFT's influence over public opinion and the political agenda; and
 - second, the wider context of other media enterprises serving the relevant audience. In this context we have considered the alternative viewpoints provided by other media enterprises, and the extent to which an increase in the degree of influence of the MFT might be mitigated or moderated by other media enterprises.

The MFT's control over Sky

34. In line with the Court of Appeal's 2010 judgment in relation to the acquisition by British Sky Broadcasting Group (BSkyB, now Sky) of 17.9% of the shares in ITV (BSkyB/ITV), we have carried out a qualitative assessment of the actual extent of the control exercised and exercisable by the MFT over Sky and News Corp. We have therefore not assumed that the MFT, Fox, Sky and News Corp are to be treated as a single entity following the Transaction.
35. We consider that the extent of control exercisable by the MFT over Sky and Sky News currently and the extent of control exercisable by the MFT post Transaction are most relevant to our assessment, and that this approach is consistent with the Court of Appeal's judgment. Furthermore, this approach reflects the purpose and content of the media plurality consideration, which seeks to guard against the potentially harmful effects of the control of media enterprises being overly concentrated in the hands of a limited number of

persons and the fact that it would be a concern for any one person to control too much of the media.

36. It is relevant that an assessment of the kind we are currently carrying out can only be triggered by an intervention in relation to a merger. Accordingly, any assessment of the control that will be exercisable post Transaction must take into account the ability of the MFT to increase the degree of control actually exercised over Sky and Sky News in the future. Although the way the MFT has exercised control over Sky and Sky News prior to the Transaction is informative, it is not determinative of its future behaviour.
37. We consider the approach adopted by the legislation reflects the fact that:
- parliament attached considerable importance to the preservation of sufficient plurality of media controllers in order to avoid an over concentration of media enterprises in the hands of a limited number of persons;
 - sufficiency is not subject to continual regulatory scrutiny; and
 - if sufficiency of plurality is lost, it may be difficult or impossible to restore.
38. Our provisional view is that the MFT and Rupert, Lachlan and James Murdoch should be considered to act together for the purpose of our assessment of the extent of control exercised and exercisable by the MFT over Fox, Sky and News Corp. This is based on the close association between Rupert, Lachlan and James Murdoch as family members and their close association with the MFT.
39. In terms of the extent of control currently exercised and exercisable by the MFT over each of Fox, News Corp and Sky, we have provisionally found that:
- the MFT exercises a significant degree of formal control over Fox. This control is exercised primarily through its shareholding and the presence of James Murdoch as CEO and Rupert and Lachlan Murdoch as Executive Co-chairmen. We also consider that the MFT's control over Fox is further enhanced by relationships between certain directors of Fox and either the MFT or members of the Murdoch family (or both);
 - the MFT exercises a significant degree of formal control over News Corp. This control is exercised primarily through its shareholding and the presence of Rupert and Lachlan Murdoch as Executive Co-chairmen, with James Murdoch as another director. In addition, the MFT through Rupert Murdoch's historic relationship with the News UK newspapers exercises

significant informal influence over News UK's newspapers, including their editorial positions;

- the MFT currently exercises a relatively low level of formal control over Sky through its indirect ownership (ie through Fox's approximately 39% holding in Sky). The extent of the MFT's control over Sky is currently constrained by the fact that Sky is a listed public company with its own independent board of directors and a majority of independent shareholders. These constraints apply to the ability of the MFT to exercise control over Sky so that absent the Transaction, the MFT would not be able to exercise significantly more control over Sky and Sky News than it currently does. Evidence we have obtained from Sky and Fox's independent directors indicates that Sky currently operates as an independent business over which Fox does not have effective control.
40. We have provisionally found that the Transaction will significantly increase the extent of control the MFT is able to exercise over Sky and Sky News. Following the Transaction, Sky will no longer be a listed public company and will instead be wholly owned by Fox, fully controlled by Fox management and with oversight by the Fox board based in the US. On that basis the MFT will also be able to exercise a similar, significant, level of control over Sky and Sky News following the Transaction, as it currently exercises over Fox
41. We consider that the direct effect of the Transaction will be to allow the MFT to significantly increase the control it is able to exercise over the management of Sky's business through formal mechanisms (over which Fox will have direct control) such as setting the strategic direction, commercial objectives and budget of Sky and Sky News, and would mean the MFT could more easily influence the appointment of senior staff at Sky and Sky News.
42. We note that increased influence by the MFT over Sky News may not manifest itself in full control over editorial output and consider that any exercise of such influence is likely to be more indirect in practice. For example, such influence will be exercisable through changes to the Sky News budget, the strategic direction of the business, seeking to secure synergies across Fox's news assets, the appointment of editorial positions within Sky News or the clear expression of the views of members of the Murdoch family directly to editorial staff, which could lead to influence over and changes to the editorial positioning and agenda of Sky News. Furthermore, as noted previously, concerns about a reduction in diversity of viewpoints do not rely on full editorial alignment, but rather the potential for increased editorial alignment.

Internal plurality and other contextual factors

43. In our assessment of the media plurality consideration, we have considered internal plurality in order to understand the extent to which, in practice, the MFT's increased control over Sky and Sky News may be constrained. Internal plurality describes the range of information and views that are provided within individual media enterprises, in contrast to 'external plurality' which relates to the range of information and views that are provided across separate independent media enterprises.
44. In the context of the Transaction, our consideration of 'internal plurality' includes the effects of a board resolution passed by Fox to protect the independence of Sky News (by requiring approval of a committee of independent Fox directors for the appointment or removal of the Head of Sky News, changes to their authority, or changes to Sky News' Editorial Guidelines), the independent culture of broadcasting newsrooms, audience expectations, the impartiality rules in the Broadcasting Code, and the existing diversity of editorial output within News UK.
45. We consider that we should attach most weight to the degree of control which would be exercisable by the MFT over Sky and Sky News following the Transaction when assessing: (i) the impact of the various constraints and safeguards identified by the Parties; and (ii) whether evidence of historic internal plurality within the media enterprises controlled by the MFT mitigates the concerns we identify in our assessment. In that context, we have provisionally found that:
- the board resolution passed by Fox may not over time (given it is an internal governance mechanism) prevent Fox taking decisions that are within the commercial interests of Fox and Sky, but which would impact on the independence of Sky News. Furthermore, the process by which the Head of Sky News is appointed is not well established or subject to clearly established parameters about who should be involved in that decision. Directors on the committee have no experience of the UK TV news sector or the UK broadcasting industry more generally, meaning that, given their extensive experience of the UK market and direct current and historic involvement with the Sky business, Rupert and James Murdoch would be likely to have considerable opportunity to influence the recommendation for any new head of Sky News. The resolution therefore does not necessarily prevent the MFT having influence over future appointments;
 - we recognise that the current culture at Sky News, which has been shaped by its operation as an independent unit with limited Sky board level involvement, may act as a constraint on the ability of the MFT to exercise

control in the short term. However, there is no inherent reason for such a culture to persist and it could be changed over time with changes in key personnel;

- while we agree that audiences expect broadcast news to be impartial, we consider that such expectations provide less of a constraint where editorial influence is subtle and not immediately obvious. We also note that different broadcast news providers in the UK take different editorial lines (for example, Channel 4 News has a different editorial focus compared to the BBC or ITV), but are perceived by audiences as being similarly trustworthy and impartial;
- the Broadcasting Code offers some protection against editorial alignment between Sky News and the News Corp newspapers. However, our view is that this protection is limited because the Broadcasting Code affords licence holders a considerable degree of latitude to adopt particular stances or viewpoints in their output in terms of both news and current affairs output.

46. We do not dispute that there is currently editorial diversity within News UK's newspaper titles, which is illustrated by different positions being taken on issues such as the EU referendum and past general elections. However, our concerns do not depend on full editorial alignment, but rather the potential for increased editorial alignment. For example, if Sky News and the News Corp newspapers could take a similar approach on specific topics or issues, push certain stories, or downplay others.
47. Although we consider that the safeguards identified are likely to mean that the MFT could not exercise its increased control over Sky News in an overt way (for example, requiring Sky to back a specific political party would not be possible given the requirement for impartiality in the Broadcasting Code), longer term and more subtle changes in position as a result of the MFT's increased influence would not necessarily engage or be prevented by any of these safeguards, so that even their cumulative effects would not be sufficient to allay concerns.

Provisional conclusion on the change in the actual extent of the MFT's control post Transaction

48. Our view is that although the MFT will not have full ownership of Sky following the Transaction, the significantly increased control it will be able to exercise over Sky and Sky News is sufficient to give rise to concerns that, as a result of the Transaction, there could be increased editorial alignment of Sky News and the newspapers owned by News Corp.

49. We consider that this increased alignment has the potential to raise concerns with regards to a material reduction in plurality leading to insufficient plurality of persons with control of the media enterprises. We find that the Transaction gives the MFT the ability to influence the content of Sky News in this way, and thus creates the potential for it to reduce the independence of Sky News from the News Corp titles.

UK news media landscape

50. In considering the current level of media plurality and the availability, consumption and impact of news providers we have looked at the distribution and different nature of news consumption across the four main platforms – TV, radio, newspapers and online. We have had particular regard to the way in which different types of news providers operate (for example newspapers as compared to TV news); and recent changes to the way that news is consumed, including the growth of online news production, distribution and distinct online aggregation services; and the impact of cross-platform distribution.
51. We note that different types of news provider serve different functions in the public’s consumption of news. For example, newspapers are known for providing opinion and a partisan voice on particular issues whereas, due in part to a different regulatory framework, TV news providers are known for a more balanced reporting of news. We see this in the level of trust reported in Ofcom’s News Consumption survey (NCS) where overall TV news providers generally rate higher than newspapers for providing news that is ‘accurate and reliable’ or ‘impartial and unbiased’.
52. The provision of news has changed significantly over the last decade with the growth of online news. However, TV remains the platform used by the highest proportion of adults as a source of news (69% in 2016). Newspapers are also still used by nearly one third of adults as a source of news.
53. We have seen an increase in access to the internet (from 60% to 88% over the last 12 years) and, crucially for news provision, very rapid growth in access to the internet via mobile devices. Online news was used by roughly half of the population in 2016 (rising from 32% in 2013). However, the consumption of online news varies significantly across age groups (56% of 18-24 year olds compared to 4% of those over 75).
54. The provision of online news is not directly regulated. The news content available comes in many forms, from breaking news feeds to written opinion pieces to video stories. We note that the provision of online news is highly fragmented (for example comScore records 532 online news providers alone).

55. Online news providers fall into three main categories:
- traditional news organisations (such as TV news broadcasters and newspaper publishers);
 - 'online-only' providers (websites such as BuzzFeed, HuffPost UK, and The Independent); and
 - 'intermediaries', who do not produce their own content but aggregate content from other sources.
56. The traditional news organisations have established a significant presence online, (for example The Sun Online has 29 million unique visitors a month).
57. The online-only providers have established a more limited presence. For example, one of the largest online-only providers is HuffPost UK, which despite offering a news service in the UK for six years still has a consumption level by some way smaller than traditional organisations' online operations.
58. Intermediaries (such as Facebook, Twitter, Google and YouTube (owned by Google)) include:
- social media sites, which allow content to be shared by users from various sources. This content can be from news organisations but also individual commentators, politicians and campaign groups;
 - search engines, which allow users to search specific terms, and in some cases provide a curated news feed drawn primarily from news organisations; and
 - aggregators, which provide a news feed drawn from a range of news organisations.
59. These intermediaries generally do not produce their own news content - they distribute content from others. We have seen an increased range of ways in which individuals and organisations can distribute their opinions and campaigns through social media. However traditional news providers continue to be among the largest contributors by number of impressions and click throughs.
60. The development of online news has increased the availability of a wide range of news sources and has provided a platform for a wider range of voices. However it has not yet significantly diminished the impact of traditional news providers who still provide news on the most consumed platforms such as TV and have developed their own significant online presence alongside their

other platforms. Traditional news organisations still provide the majority of news content that is consumed online.

Ensuring that there is diversity in the viewpoints that are available and consumed

61. We have considered whether the Transaction is likely to materially reduce the diversity of viewpoints available and consumed in UK news and current affairs content. In particular, we have assessed whether the MFT's increased influence over Sky and Sky News as a result of the Transaction might reduce the independence of Sky News from that of News Corp, and whether this could lead to a reduction in the diversity of viewpoints available to the public.
62. We have assessed the likely scale of this loss of diversity of viewpoints by building on Ofcom's measurement framework, considering the availability, reach and consumption of alternative providers before and after the Transaction through the use of both quantitative metrics and qualitative evidence.

Availability

63. First, we have considered the number and nature of news providers available. Following the Transaction there will continue to be a large number of news sources available to the public, including online news providers. However, merely counting the number of news providers does not give us any insight into their reach, consumption or influence, and thus is of limited relevance to plurality.

Reach

64. Reach measures the number of people who use a news source in a given time period, for a minimum duration. It is a relatively high-level measure given that a source will be counted as having 'reached' a user even if actual engagement is relatively limited.
65. Sky News and the News Corp titles have significant combined reach. For example, The Sun currently has the largest reach of any national newspaper. The Sky News website and The Sun website reach around 20% of adults each in the UK. Sky News TV reaches fewer viewers (9%) than the BBC (62%) or ITN (43%), but is one of a limited number of TV broadcasters, and as such has the third largest reach in the UK.
66. The cross platform reach for Sky News is 21% and NewsCorp is 14%, and 31% on a combined basis, meaning that nearly one in three members of the

public uses one of their platforms to access news. The combination of News Corp and Sky News would have the third largest reach behind the BBC (77%) and ITN (39%) but almost double that of the next largest, Daily Mail and General Trust (DMGT) (17%).

Consumption

67. Going beyond the reach of a news provider we have considered how to measure consumption. Consumption measures attempt to track the actual amount of time that a consumer has spent engaging with a particular news source. The most detailed measure of cross-platform consumption is a bespoke 'share of reference' metric devised by Ofcom. This metric attempts to provide a 'common currency' for measuring news consumption across all four platforms.
68. Sky News and the News Corp newspaper titles account for a significant share of current news consumption on each platform. Sky News accounts for 7% of TV news consumption, behind the BBC (76%) and ITV (12%) but ahead of other providers. Despite declining readership, The Sun has an average daily readership of 3.5 million (the largest readership of all national daily newspapers). The Times has an average daily readership of 1.1 million. Sky News has the largest share of online news consumption behind the BBC, followed by The Mail Online, BuzzFeed and The Times.
69. On a cross-platform basis, Sky News and News Corp together represent at least 10% of total news consumption using Ofcom's share of reference measure. Sky News alone accounts for around 6% of the total share of reference larger than all other news providers except the BBC and ITN. We have considered sensitivity adjustments to reflect alternative assumptions. These adjustments could increase the combined share of reference of Sky News and News Corp to as much as 14%.
70. We have considered the extent to which people use multiple sources of news in a way which might reduce our concern about the impact of the Transaction on the diversity of viewpoints consumed. While the average customer of Sky News and News Corp uses between four and five different sources of news, roughly a third of their customers uses between one and three sources of news. In other words, a significant minority of their customers remain relatively reliant on the news content they produce. Overall, the evidence of multi-sourcing does not remove our concern about the impact of the Transaction on the diversity of viewpoints consumed.
71. The Parties have submitted that a 10% share of consumption for Sky News and News Corp is not consistent with a finding that the Transaction could lead

to a material reduction in diversity of viewpoints. We do not agree. The increment from the Transaction is large relative to the shares of reference of other established news providers. Sky News and News Corp have a combined share of reference that is significantly larger than the fourth largest news provider, DMGT. The shares of reference of news providers have been relatively stable over time, with limited new entry among major news providers and limited organic growth. Although there is a long tail of news providers, most of these providers only operate on one or two platforms and many of their individual shares of reference are 1% or less.

Assessment of other news providers

72. The BBC is the only other provider with a significant presence across multiple platforms, and is the largest provider of news in the UK. The BBC has a significant role in informing the public, reflected in the unique way it is governed and funded. This means that the BBC is under particular pressure to provide impartial and balanced news coverage. Furthermore, unlike the MFT, the BBC does not control any newspapers.
73. ITN would have a similar share of consumption to Sky News and News Corp following the Transaction. However, we note that there is a commercial need for ITN to reflect the preferred style, tone and editorial approach of the retail news providers to which it provides news under contract (ITV, Channel 4 and Channel 5). ITN is also focused largely on a single platform (TV), with limited online presence and does not control any newspapers or radio news.
74. With the exception of the BBC and ITN, the remaining providers' individual shares of reference are small relative to Sky News and News Corp. These providers are primarily focused on one platform (such as BuzzFeed online, or Bauer on radio). New entrants have not been able to establish a share of reference above 1%.
75. We also consider that post Transaction, given the restrictions on the ownership of ITV, the fact that Channel 4 is publicly owned, and the limited share of reference of Channel 5, it is unlikely that another cross-platform provider with the scale and scope of the Parties and News Corp combined could emerge.
76. Given the potential for increased editorial alignment between Sky News and News Corp following the Transaction as a result of the significant increase in the control the MFT will have over Sky News, and based on our assessment of the evidence on availability, reach and consumption, we provisionally conclude that there would be a material reduction in the plurality of persons

with control of media enterprises such that there is a risk that the diversity of viewpoints consumed by the public will be materially reduced.

Preventing any one media owner, or voice, having too much influence over public opinion and the political agenda

77. We have considered whether the Transaction will provide members of the Murdoch family, through the media enterprises controlled by the MFT, with increased influence over public opinion and the political agenda.
78. We have found that the MFT already has significant influence over public opinion and the political agenda through its existing control of the News Corp titles. The Times, The Sunday Times, The Sun and The Sun on Sunday together are one of the most read group of newspapers, and that readership covers a broader audience than any other media enterprise involved in the supply of newspapers. News Corp newspapers also have a significant online presence.
79. Studies of news agenda-setting show that, even though the reach of print newspapers has been declining, News Corp's newspapers (both print and online) still have a significant impact on the wider news agenda, including the stories that are carried by TV and radio broadcasters.
80. There is some evidence to suggest that new online-only providers can sometimes lead the news agenda and are beginning to be seen as important in influencing the political agenda. However, we consider that the evidence suggests that it is the traditional news providers that do this on a consistent basis and, due to their resources, that this is likely to continue to be the case for the foreseeable future.
81. The influence of the Murdoch family through the MFT has been highlighted by a large number of third parties, including politicians and political advisers. In addition to this perception of influence, we have noted that members of the Murdoch family and representatives of News Corp have met with government ministers significantly more frequently than other newspapers owners over the past two and a half years. We have therefore given weight to the conclusions reached in the Leveson Inquiry and have used the detailed assessment of the relationship between the press and politicians undertaken by the Leveson Inquiry as a starting point for our own assessment.
82. We have considered the extent to which the MFT's greater control over Sky News could enable the Murdoch family to exercise increased influence over public opinion and the political agenda as a result of the Transaction. The Transaction would give the MFT significantly increased control over Sky News

and therefore significant control over news providers across all four platforms – TV, newspapers, online and radio.

83. While the Parties have argued that television news is constrained by the Broadcasting Code, we find that it can nonetheless be used to influence, even if in different ways to newspapers and other media platforms. We are therefore concerned that this cross-media position, with control of news providers across all four platforms, could amplify the influence of the MFT in several ways.
84. First, these news providers directly reach nearly a third of the UK population and have a consumption in terms of share of reference of at least 10%. We have provisionally found that the Transaction would give the MFT the ability to increase alignment between Sky News and the News Corp titles over time, for example through story selection and highlighting particular issues.
85. Second, like the other main UK TV news broadcasters, Sky News is highly trusted, which means its influence is likely to be greater than its reach and consumption figures indicate.
86. Third, the increased control of Sky News gives the MFT access to different customer groups from those who read the News Corp titles. For example, only around a quarter of Sky News viewers read at least one of the News Corp newspapers or websites. This would allow the MFT to influence the views of a significantly wider audience.
87. Finally, the ability to repeat on Sky News, news stories previously covered in the News Corps newspapers (and vice versa) may have an amplification effect beyond that indicated by numbers (for example, a story originating in The Sun repeated on Sky News is likely to be more influential than if it was simply repeated in The Sun the following day). Combined with its control of media enterprises with a presence online (and in radio), the MFT will increase its ability to lead the news agenda and influence public opinion.
88. This cross-platform presence across newspapers, TV, online and radio is not matched by any other person with control of media enterprises, and is unlikely to be matched in the future.
89. The BBC would continue to have a larger share of overall news consumption following the Transaction, and would match the broad demographic reach of the MFT. However, it notably lacks a newspaper platform, and faces tighter constraints on pursuing a particular editorial line than the media owned by the MFT (even taking into account the Broadcasting Code). Similarly, although ITN has a similar share of reference to Sky News and News Corp taken together, it is focused largely on one medium – TV news – with no presence

in newspapers or radio, and only a relatively small online audience. Given this context, we consider that the Transaction will give the MFT a unique position from which to influence the news agenda.

90. Overall, we provisionally find that as a result of the Transaction the MFT will be able to exercise a significantly increased level of control over Sky and Sky News. This would enable the MFT to exercise materially greater influence over public opinion and the political agenda through Sky News, and would add to the MFT's already significant influence over public opinion and the political agenda through its control of the News Corp titles.

Assessment of sufficiency and provisional finding on the media plurality consideration

91. We have set out above our provisional findings that:

- the Murdoch family, through the MFT, will be able to exercise a significantly increased level of control over Sky and Sky News. This, combined with the already significant level of control that the MFT is able to exercise over News Corp, will mean the MFT will have the ability to control the way in which these media enterprises provide news to the public; and
- this significant increase in control has the potential to lead to a material reduction in diversity of viewpoints that are consumed, across and within media enterprises, and would enable the MFT to exercise materially greater influence over public opinion and the political agenda through Sky and Sky News, in combination with its existing level of control over News Corp titles.

92. We consider below whether there would be sufficient plurality of persons with control of the media enterprises following the Transaction.

93. Based on our analysis of the impact of the Transaction on diversity of viewpoints and the influence of the MFT, we have provisionally concluded that the MFT would have greater control over a very substantial share of the viewpoints consumed by audiences in the UK:

- Sky News and the News Corp titles currently provide news to nearly a third of the population and have a combined share of consumption significantly greater than all other news providers, with the exception of the BBC and ITN;
- Sky News is the only UK-focused commercial 24-hour news channel and is the third highest consumed TV news provider behind the BBC and ITV.

The Sun has the largest readership of all daily national newspapers and The Times also has significant reach and influence. Sky News, The Sun and The Times all have significant and growing online brands, which provide a wide variety of content to diverse sections of the population;

- the MFT will be the only person with control of media enterprises across all four platforms – broadcasting, newspapers, online and radio.

94. While we note that the MFT already has material influence over the media enterprises providing these various viewpoints, the Transaction would increase its control over Sky News and further concentrate control of these enterprises in the hands of the MFT.

95. The Transaction will also strengthen the ability of the MFT to exercise influence over public opinion and the political agenda from an already strong base:

- the reach and share of reference of Sky News, in addition to that of the News Corp titles, gives them an increased ability to influence public opinion and lead the news agenda. Sky News and The Times in particular are highly trusted and therefore likely to be more influential than raw audience numbers indicate;
- traditional news providers, particularly newspapers and broadcasters, continue to play a key role in leading the news agenda across all media platforms;
- significantly increased control of Sky News means that the MFT will be the only person with control of media enterprises across all four platforms which will enable it to amplify its messages across newspapers, TV, online and radio;
- members of the Murdoch family and representatives at News Corp have historically had greater access to government ministers than other comparable news providers, and the scope for access and influence could be increased following the Transaction.

96. We have gone on to consider the extent to which other news providers will be in a position to mitigate or moderate the influence of the MFT following the Transaction.

97. We consider that the established news providers in newspaper and TV continue to be the principal players in determining the extent of media plurality in the UK. These news providers are well funded and have sufficient scale to

remain as trusted news sources. They have also developed significant online brands with a wide reach and in some cases a high level of consumption.

98. In our view two important consequences follow from this:
- first, as reflected in the current statutory limits on cross-platform ownership between ITV and newspapers, combinations of TV and newspaper media enterprises should be placed under close scrutiny, taking into account the relevant evidence on a case by case basis. This is particularly the case given that it is only when there is a merger between media enterprises that it is possible to carry out an assessment of the sufficiency of media plurality. It is difficult to establish a news provider of national significance and as such it is in the public interest to ensure close scrutiny of the loss of an independent voice of such a provider. We consider this factor is a key reason why parliament attached considerable importance to the preservation of plurality of persons with control of media enterprises, as once plurality is lost it may be difficult to restore.
 - second, we consider it is only established news providers with a substantial presence in TV and newspapers who might be in a position to mitigate or moderate the increased influence of the MFT.
99. While the provision of online news has rapidly developed and there has been entry of online only news providers, this entry appears so far not to have significantly eroded the influence of the traditional news providers (including through their online presence). The evidence that we have gathered indicates that traditional news providers still contribute the majority of the news content that is consumed online, and Sky News and News Corp newspapers are significant online players.
100. We have considered how we should take account of the position of the BBC, which is by some margin the largest news provider in the UK. Although the BBC is undoubtedly influential and can drive the wider news agenda, we are also conscious that its unique funding structure and governance place special constraints on it to be impartial, in a way which goes beyond the requirements of the Broadcasting Code. We consider that this limits the extent to which the BBC can directly challenge the positions taken by other news providers or mitigate or moderate other news owners' influence.
101. We recognise that there will be other news providers, including ITN and the larger newspaper groups, which could provide a counterpoint to the MFT's influence. However, the MFT is the only person with control of media enterprises across all four platforms –newspapers, TV, online and radio, and all other news providers (except the BBC and ITN) are of a magnitude smaller

than the combination of Sky News and News Corp newspapers. Consequently, the MFT is the only person with control of media enterprises that would have brands which span the spectrum of highly trusted TV news through to unregulated opinion and comment. The Transaction would increase the MFT's control over Sky News, and therefore concentrate its control over news providers across all four platforms.

102. We find that it is unlikely that another news provider would be able to mitigate or moderate, either through its current position or through organic growth or by acquisition, the increased control and influence of the MFT post Transaction. In that regard, we consider it is relevant that history indicates the difficulty in building up a significant national news provider through growth and that post Transaction the only other significant TV news providers, other than the BBC, are ITV, in relation to which there are legal restrictions on ownership by newspaper groups of a material size, and Channel 4, which is publicly owned.
103. Taking the points outlined above together, and based on our assessment of the evidence in the round, we have provisionally concluded that the Transaction may be expected to result in insufficient plurality of persons with control of media enterprises serving audiences in the UK because it would lead to the MFT holding too great a degree of control over the diversity of viewpoints consumed by audiences in the UK and would give the MFT too much influence over public opinion and the political agenda.
104. As a result, we provisionally found that, on the balance of probabilities, the Transaction may be expected to operate against the public interest, taking account of the need, in relation to every different audience in the UK or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience.

Genuine commitment to the attainment of broadcasting standards

105. The broadcasting standards consideration is set out in section 58(2C)(c) of the Act as:

the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.

106. The broadcasting standards objectives and the Broadcasting Code are clearly closely related, as the Broadcasting Code is developed by Ofcom to give

effect to the broadcasting standards objectives. Nevertheless, we note that the broadcasting standards consideration refers to the need for a commitment to the broadcasting standards objectives, which are in the nature of general principles, rather than to the detailed rules of the Broadcasting Code.

107. We have carefully considered how we should assess the broadcasting standards consideration. This is the first time that a reference has been made by the Secretary of State on such grounds and the only guidance about how to interpret the test we need to apply is set out in the Explanatory Notes to the Communications Act 2003 (the Explanatory Notes) and guidance prepared by the then Department of Trade and Industry dating from 2004 (the DTI Guidance).

Framework for our assessment

108. We consider that in the absence of precedent and any recent guidance, the need for 'a genuine commitment to the attainment' of the broadcasting standards objectives should be given its natural and ordinary meaning. Like any phrase in a statute, it must be read in context, having regard to the purposes of the legislation in question. The Explanatory Notes and the DTI Guidance refer to the intention behind the broadcasting standards consideration as being to assess compliance with the 'spirit' and not just the 'letter' of the broadcasting standards objectives.
109. The Parties challenged the notion of spirit, submitting that consideration of a commitment to the spirit of the Broadcasting Code lacks clarity and would be a disproportionate inhibition on freedom of expression and would result in very substantial uncertainty. The Parties also submitted that the way a media enterprise shows a genuine commitment to the attainment of the broadcasting standards objectives is to satisfy the authorities that one complies, and intends to comply, with the relevant standards laid down in the Broadcasting Code.
110. Our view is that where a media enterprise is already involved in broadcasting in the UK, its record of complying with the Broadcasting Code is of central relevance to the assessment of the broadcasting standards consideration. However, we do not consider that a positive record of compliance is, by itself, sufficient to conclude that a relevant person has a genuine commitment.
111. We are nevertheless mindful that a commitment to the spirit of the broadcasting standards objectives may be difficult to observe directly or to test. In that regard, we agree with the Parties that the concept of spirit is, by itself, too vague to provide meaningful guidance on how to apply the broadcasting standards consideration and assess a genuine commitment.

112. Our view is that to demonstrate the ‘genuine commitment’ required, the relevant persons must show that effective steps have been and/or will be taken to promote and support a culture in which the broadcasting standards objectives are attained. We would therefore expect to see observable indicators that provide evidence of an intention to promote and support compliance with the Broadcasting Code and the broadcasting standards objectives. This would mean the relevant persons having in place effective up to date systems, policies and procedures that are embedded within the business in a way that supports and facilitates the ongoing attainment of the broadcasting standards objectives.
113. We consider that this is a workable and evidence-based approach to assessing the commitment of Fox, Sky and the MFT (as the person with control of Fox and Sky following the Transaction) to the broadcasting standards regime (both in its spirit and its letter). With this in mind, we have considered a wide range of evidence, both relating to the UK and elsewhere, covering:
- how Fox and Sky approach the broadcasting standards objectives in the UK;
 - how Fox and Sky approach broadcasting standards outside the UK; and
 - the approaches of Fox and News Corp (as companies controlled by the MFT and in which members of the Murdoch family hold senior positions) to wider regulatory compliance and corporate governance.

Broadcasting standards in the UK

114. The Parties have a long history of broadcasting in the UK. Fox and Sky each hold multiple UK broadcast licences and air a number of channels that attract tens of thousands of viewers each day. Against this backdrop, we consider that the Parties’ approach to broadcasting standards and their compliance records in the UK comprise the most direct and relevant evidence to the broadcasting standards consideration. We received a large number of submissions from third parties addressing the commitment of both Sky and Fox to the broadcasting standards objectives in the UK. We have taken these into account in conducting our assessment.
115. In the UK, Ofcom is responsible for regulating broadcasting. Its duties include licensing and ensuring licensees remain ‘fit and proper’. Ofcom currently oversees over 1,000 licences. It is rare for Ofcom to find that an existing licence holder is not fit and proper. It has only revoked two broadcast licences on these grounds in the past five years. As well as licensing, Ofcom is

required to draw up codes for TV and radio broadcasting covering, among other things, the broadcasting standards objectives – including the Broadcasting Code.

116. The broadcasting standards objectives cover a range of matters, including protection of the under-18s; restrictions on the inclusion of offensive or harmful material or material that is likely to incite crime or disorder; the requirements for due accuracy and due impartiality for news and ‘special impartiality’ for matters of political or industrial controversy and current public policy; the control of various advertising practices; and requiring responsibility in the content of religious programmes.
117. Although Ofcom monitors content proactively from time-to-time, it is alerted to potential breaches of the Broadcasting Code mainly via complaints made against broadcasters. Ofcom receives a sizeable number of such complaints: in 2016/17, it received over 15,000. In the past five years, Ofcom has launched almost 900 investigations under its content standards procedures, and has identified 572 breaches of the Broadcasting Code. When a broadcaster breaches the Broadcasting Code deliberately, seriously, repeatedly or recklessly, Ofcom may impose statutory sanctions. Ofcom has imposed sanctions on broadcasters for serious breaches 17 times in the past five years.
118. In applying the Broadcasting Code, Ofcom takes into account the context of the material complained about, including the degree of harm and offence likely to be caused, the likely size and composition of the audience and the likely expectations of the audience.

Fox

119. Fox currently holds 12 licences to broadcast content in the UK. The international feed of Fox News, which had broadcast into the UK since 2001, was switched off on 29 August 2017. Fox News relinquished its licence to Ofcom on 1 November 2017. STAR Utsav ceased broadcasting in the UK on 4 January 2018.
120. We have looked across Fox’s 12 current UK broadcast licences, as well as those it has recently ceased broadcasting in the UK: Fox News and STAR Utsav. Our review of the steps Fox has taken to attain the broadcasting standards objectives (including whether policies, systems and procedures are embedded within the Fox divisions broadcasting in the UK in a way that supports ongoing attainment of those objectives) has highlighted a difference between (i) the licence that was held by Fox News and (ii) the other 13

licences held by Fox for channels compiled for UK or European audiences (FNG, National Geographic and STAR channels).

121. Although the content broadcast on the five FNG and four National Geographic channels is largely US produced, all but one of the channels are compiled specifically for audiences in the UK and Ireland (the exception being National Geographic Wild, which is compiled for a European-wide audience). At FNG and National Geographic we found evidence of Fox embedding policies, systems and procedures into its businesses to support and promote the attainment of the broadcasting standards objectives. This included Fox having detailed, up to date policies, systems and procedures in place and a team dedicated to compliance with the Broadcasting Code. The team comprised experienced staff, trained specifically on UK broadcasting standards and the Broadcasting Code. In addition, we found effective ex ante controls in place to monitor, review and edit content, to assess its compliance with UK broadcasting standards and the Broadcasting Code, before it is broadcast in the UK and Ireland.
122. Content broadcast on STAR channels is produced in India for viewers in India and members of South Asian communities globally. The three STAR channels currently broadcast in the UK are (and STAR Utsav was) targeted at audiences across Europe via the same feed and compiled for a European audience. Again, we found evidence of Fox embedding policies, systems and procedures at STAR to support and promote the attainment of the broadcasting standards objectives. Of the large team at STAR dealing with compliance in India and internationally, over a third deal specifically with compliance with the UK's broadcasting standards, and processes are in place to edit content for broadcast in the UK to comply with the Broadcasting Code.
123. The picture at Fox News was different. Fox News is produced for US audiences and, when it was broadcast in the UK, it was simulcast through an international feed unedited, except for Fox Extra content (which replaces US advertising breaks in the international feed). During its phase 1 review, Ofcom identified that Fox News had no compliance team or officers specifically dedicated to monitoring Fox News' content for compliance with UK broadcasting standards. Nor had specific training on the Broadcasting Code been given to the members of staff dealing with international broadcasting standards. That said, those members of staff in the US dealing with compliance with international broadcasting standards did review the Fox Extra inserts and edited some content to be broadcast on the international feed. In response to Ofcom's concerns, Fox introduced substantial additional policies, systems and procedures to facilitate Fox News' compliance with UK broadcasting standards.

124. When asked about the lack of UK-specific processes at Fox News, Fox submitted to us, and to Ofcom, that it had believed Fox News' approach was appropriate and proportionate. Fox explained that Fox News' approach was founded both on an understanding of the importance of context in applying the Broadcasting Code to content, and on the assumption that Ofcom agreed with the approach taken. In Fox's view this was demonstrated by the fact that, over a ten-year period, Ofcom had only found Fox News to be in breach of impartiality requirements three times.
125. The new policies, systems and procedures introduced by Fox in response to the concerns Ofcom raised were only in place from May to August 2017, when Fox News stopped broadcasting in the UK. Given this, we have limited evidence to assess the efficacy of these arrangements. We note that Ofcom was satisfied with their adequacy.
126. The differences in policies, systems and procedures and other proactive steps to promote and support compliance with the Broadcasting Code between the 12 current Fox licences and STAR Utsav on the one hand and Fox News on the other were mirrored in our findings from our review of compliance records. In the past five years, across all its 12 current licences and STAR Utsav, Fox has only been found in breach of the Broadcasting Code six times. Three of these breaches related to standards concerning advertising and took place nearly five years ago. Conversely, Fox News has breached the Broadcasting Code ten times in the past five years (five of which were between April 2016 and May 2017), more than all the other 13 Fox licences combined.
127. In weighing up the evidence across Fox's licences, we consider it important that Fox News is a US news channel, directed at US audiences, that was simulcast directly into the UK largely without editing. The average audience size for Fox News was small by comparison to other international news channels. In our view, it is likely that Fox News' audience in the UK would have been aware it was a US news channel and are likely to have had expectations corresponding with the type of US-focused news and current affairs content typically shown on Fox News. We also note that Ofcom's regulation of broadcasting content in the UK is grounded in and takes account of context of this nature. Against this backdrop, we consider that Fox's explanation for its misinterpretation of the depth and breadth of the requirements of the Broadcasting Code when applied to the context of Fox News, in terms of deficiencies in its procedures, is credible.
128. Furthermore, we consider that it is relevant that Ofcom has imposed no sanctions on Fox News or any other Fox channel under licence in the UK. This contrasts with the record of a UK-based news provider whose content is

compiled specifically for UK audiences and who has been sanctioned in relation to breaches in news programming.

129. Given that the content broadcast via Fox's 12 current licences is (and the content on STAR Utsav was) compiled specifically for the UK and/or European audiences, we consider that Fox's approach to compliance in those parts of its business is most informative in relation to Fox's commitment to the attainment of the broadcasting standards objectives. At Fox's 12 current UK licences and STAR Utsav, we found both a positive compliance record and evidence of policies, systems and procedures being embedded within the business in order to support a culture in which the broadcasting standards objectives are attained. In our view, this provides strong evidence of a genuine commitment to the attainment of the broadcasting standards objectives.
130. In contrast, we thought that Fox News' approach and compliance record should not be given undue weight in our overall assessment of Fox's commitment to broadcasting standards in the UK, given the fact that Fox News was broadcasting in the UK as a simulcast of its US feed, the nature of its likely audience, and the importance of context in the regulatory regime.
131. We do not therefore consider that the inadequacy of the arrangements in relation to the unedited simulcast of the international feed of Fox News outweighs the positive record and proactive steps Fox took to promote and support compliance with the Broadcasting Code and the broadcasting standards objectives across its 13 other licences, which all broadcast content compiled specifically for UK and/or European audiences. Overall, our provisional view is that Fox's approach to broadcasting in the UK, looked at in the round, demonstrates a genuine commitment to the attainment of the broadcasting standards objectives in the UK.

Sky

132. Sky holds 54 licences to broadcast content in the UK, ranging from news to sports to entertainment programmes. Much of the content is produced specifically for UK audiences.
133. Our review of Sky's approach to broadcasting standards in the UK found that Sky has in place extensive and thorough policies, systems and procedures that promote and support compliance with the Broadcasting Code and the attainment of the broadcasting standards objectives. Sky has an experienced and well-staffed compliance team that helps support and inform staff of its regulatory obligations and their responsibilities under Sky's internal systems. Sky has in place processes to check, monitor and edit content before it is

aired. Sky trains its staff on a range of issues including the Broadcasting Code and the broadcasting standards objectives; has written guidelines to help staff understand the legal and regulatory framework in which they operate; and has in place effective policies to remedy any compliance issues if they do arise.

134. Across its 54 licences, Sky has breached the Broadcasting Code 27 times in the past five years. None of the breaches was sufficiently serious to warrant a sanction. Thirteen of the 27 breaches related to offensive language. One of the breaches related to due impartiality when Sky News' failure to list all of the candidates in a London constituency was found in breach of the special impartiality requirements applied at the times of elections and referendums. Our review of breaches by Sky did not identify any significant issues across Sky's 54 licences.
135. We compared Sky's compliance record, and in particular that of Sky News, with comparable broadcasters like the BBC, ITV and Channel 4, each of which has similarities to Sky with sizeable UK audience reach, content curated mainly for a UK audience, and the broadcast of news and current affairs programmes. We found that Sky's overall compliance record is in line with that of its peers and that Sky News' record is on a par with other major news providers in the UK like BBC News, ITV News and Channel 4 News.
136. Having reviewed Sky's record of complying with the Broadcasting Code and evidence of the other ways in which Sky has acted to promote and support the attainment of the broadcasting standards objectives within its business, we provisionally conclude that Sky is genuinely committed to the attainment of the broadcasting standards objectives in the UK.

Broadcasting standards outside the UK

137. Broadcasting standards differ from one country to another. The content of broadcasting laws and regulations and the approach to their enforcement depends on a country's political, economic and cultural makeup. A review of the Parties' approach to broadcasting standards outside the UK is nevertheless relevant to the broadcasting standards consideration as it could reveal a broader indication of the approach of the Parties generally to compliance with broadcasting standards.

Fox

138. Fox is a global media company providing cable network programming, TV and filmed entertainment, with interests in over 500 channels in over 170 countries. Outside the US, Fox channels are principally distributed by FNG, National Geographic and STAR. Under its licensing arrangements (where

local distributors are responsible for local compliance), Fox is only directly responsible for compliance with local broadcasting standards in a few jurisdictions. Within the EU/EEA, under the provisions of the Audiovisual Media Services Directive, Fox is only required to hold a licence in any one EEA country in order to broadcast to other EEA countries.

139. We looked at Fox's policies, systems and procedures within the relevant business and the extent to which these are embedded in a way that supports and promotes a culture of compliance. We found that Fox's approach to compliance in other countries, including its policies, systems and procedures, mirrors its approach in the UK. That is, it has different policies for Fox News on the one hand, and FNG, National Geographic and STAR channels on the other.
140. As we found for the UK, Fox News has limited policies, systems or procedures in place that are specific to compliance with the broadcasting standards of other countries in which it broadcasts outside the US. However, as noted above, Fox News is simulcast and, additionally, in most jurisdictions in which Fox News is distributed, other than the EEA and the US, the multichannel platform operator is the licence holder and is responsible for compliance with local regulatory standards, rather than Fox News itself.
141. We asked Fox for data on complaints made against it in all of the 170 countries in which it operates. We also contacted 16 international media regulatory authorities, including those in the countries in which Fox told us it had breached broadcasting standards, to confirm the accuracy of Fox's submissions on compliance with country-specific standards and to investigate whether international regulators had any observations about Fox's commitment to broadcasting standards in their country.
142. We found that Fox's services have breached local broadcasting rules in ten countries outside the UK in the past five years. Based on our assessment, we consider that the countries in which the largest number of breaches have occurred are jurisdictions where meaningful inferences cannot be drawn regarding Fox's commitment to broadcasting standards in the UK, given political and cultural differences.
143. Overall, we agree with Ofcom's view which accords more weight to the record of compliance by Fox in EU jurisdictions, where prevailing regulation is broadly similar to that which exists in the UK. Fox's record of compliance in the EU and the EEA is good.
144. In forming our overall view, we attach weight to the views of broadcast regulators about compliance in their own jurisdictions, given their respective

expertise and knowledge of their own domestic arrangements. Again, none of the evidence Fox provided indicated that it had a lack of commitment to the attainment of local broadcasting standards in its jurisdictions. In view of this, we provisionally conclude that the evidence from overseas jurisdictions on Fox's record of and approach to compliance outside the UK does not raise concerns about Fox's commitment to the broadcasting standards objectives in the UK.

Sky

145. Outside the UK, Sky has a presence in Ireland, Germany, Austria, and Italy. In addition, Sky News International is simulcast to over 100 countries and is distributed to third party operators. It is a direct feed of Sky News UK, except for bespoke content that is broadcast during advertising breaks, which is created and inserted into the feed by Sky in the UK. Sky does not provide specific regional feeds or include 'local' content for Sky News International.
146. While Sky's record in the jurisdictions outside the UK in which it has to comply with local broadcasting standards is not perfect, we note that almost all of the breaches related to advertising. Furthermore, in Italy, the country in which Sky had the most breaches, almost all were attributable to a technical failure of the software used by Sky Italia, rather than any suggestion of issues with Sky's policies, systems and procedures or with the approach to compliance at Sky. Our provisional conclusion is that Sky's approach to broadcasting standards outside the UK, in terms of its policies, systems and procedures and its compliance record, raise no concerns about Sky's commitment to the attainment of the broadcasting standards objectives in the UK.

Wider regulatory compliance and corporate governance

147. We consider that evidence relating to wider regulatory compliance and corporate governance failures is potentially relevant to our assessment of the broadcasting standards consideration. For example, it may indicate that a media enterprise's policies, systems and procedures are nominal or ineffective in terms of supporting and promoting a culture of compliance with regulatory standards.
148. Third parties have submitted that companies controlled by the MFT and in which members of the Murdoch family hold senior positions, in general, do not prioritise compliance with regulatory standards. In particular, a number of third parties have submitted that these companies prioritise commercial gain or interests, such as influence, over compliance with regulatory standards. The main issues of concern raised by third parties related to (i) misconduct at

News Corporation (which was split in 2013 into Fox and News Corp) prior to the Leveson Inquiry in 2011 in connection with phone hacking, and (ii) more recent allegations of sexual harassment and racial discrimination at Fox News in the US. Notably, in relation to sexual harassment allegations, those made against senior staff such as the former CEO of Fox News, Roger Ailes, and the high-profile Fox News presenter, Bill O'Reilly. At the time of the reference, the then Secretary of State specifically considered that the wider question of corporate governance could usefully be considered in further detail by us during our Inquiry.

149. Our view is that where a media enterprise – such as Fox – is already involved in broadcasting in the UK, evidence that directly relates to an intention to promote and support the attainment of the broadcasting standards objectives in the UK and its record of compliance with the Broadcasting Code, is of central relevance and should be accorded the greatest weight in our assessment. Nevertheless, we noted the large number of submissions raising concerns in relation to wider regulatory compliance and corporate governance. We have therefore looked at how Fox and News Corp (as companies controlled by the MFT and in which members of the Murdoch family hold senior positions) meet other, non-broadcasting, legal and regulatory obligations – including regulations relating to newspapers in the UK.
150. We have looked at News Corp's approach to wider regulatory compliance in the context of newspaper regulation. We have also examined Fox's corporate governance and the efficacy of its policies, systems and procedures that seek to ensure wider regulatory compliance. We then considered the weight to give this evidence in our assessment of the broadcasting standards consideration. In considering wider regulatory compliance and corporate governance, we have:
 - considered the findings of the Leveson Inquiry and those of the Culture, Media and Sport Select Committee on the failings of regulatory compliance at News International and its parent News Corporation in terms of compliance with press standards and the law in the context of phone hacking;
 - had regard to the criticisms levelled at both Rupert and James Murdoch in relation to corporate governance failings at that time (including by Ofcom in its 2012 report following its 'fit and proper' assessment of Sky as a broadcast licence holder);
 - examined the record of News Corp in complying with newspaper self-regulation in the UK, noting the creation in 2012 of a Chief Compliance

Officer role at News UK and the introduction of a group-wide global compliance programme by the (then News Corporation, now Fox) board;

- reviewed in detail, how Fox dealt with the serious allegations relating to sexual harassment at Fox News, including by questioning Fox board members; and in the context of these allegations, and other complaints and settlements related to corporate governance issues at Fox more widely,
- considered the efficacy of Fox's previous and existing policies, systems and procedures and the timeliness and effectiveness of Fox's responses.

151. With regard to misconduct at News Corporation in connection with phone hacking prior to the Leveson Inquiry in 2011, it is clear that there were serious failings in regulatory compliance with newspaper regulation and the law, as documented by the Leveson Inquiry and elsewhere. However, the misconduct which gave rise to the phone hacking scandal, while serious, occurred some time ago.

152. As a result, we also looked at the record of News Corporation and News Corp in the UK post Leveson. We found that the policies, systems and procedures News UK put in place were a considered and detailed attempt to address the failings identified by the Leveson Inquiry and others in the aftermath of phone hacking. News UK's record since shows its approach to complaints handling is on a par with comparable news publishers in the UK. We have also not identified evidence that indicates more recent non-compliance by News UK (or News Corp more generally) with UK regulation in general or press regulation in particular.

153. With regard to the allegations against Fox News employees in the US, we acknowledge that Fox moved quickly in dealing with specific allegations against Roger Ailes once the Fox board was aware of these. The evidence suggests that there were factors relating to Bill O'Reilly's contractual arrangements that may explain why he was not dismissed sooner, and why the Fox board was not aware of the full extent of the recent personal settlements he had entered into. We also acknowledge that Fox has subsequently supplemented existing and introduced new corporate governance arrangements to deal with workplace harassment. However, we have concerns that these issues were not identified sooner by Fox and that there were deficiencies in certain of its previous corporate governance arrangements.

154. Nevertheless, while the submissions raised by third parties and the failures of corporate governance in the US concern serious matters, we note that they

relate to allegations of sexual harassment and racial discrimination and are not directly related to the attainment of broadcasting standards, in the UK or elsewhere. We therefore attach greater weight to the evidence relating to Fox's commitment to those standards in our assessment of the broadcasting standards consideration.

155. We have also considered the concern raised by third parties, and noted by the then Secretary of State at the time of the reference, that MFT controlled companies prioritise commercial incentives or other interests over regulatory compliance and ethical standards, meaning that the MFT and Fox do not have a genuine commitment to the broadcasting standards objectives. We reviewed the corporate arrangements Fox had in place to address wider regulatory compliance and the response of Fox and the Fox board to the issues that arose. The evidence showed that there were deficiencies in certain policies, systems and procedures, for example the fact that HR, Legal and Finance as functions, remained de-centralised and operated at business unit level, with limited requirements for these functions to report upward. However, we did not find, taking the evidence in the round, that the deficiencies in corporate governance that may have contributed to employee misconduct not being identified sooner were motivated by the prioritisation of commercial or other interests over regulatory compliance or ethical standards.
156. Our provisional view is that the inadequate compliance arrangements for Fox News in the UK were a result of Fox's misinterpretation of the approach taken by Ofcom in applying the Broadcasting Code. Accordingly, we consider that the deficiencies in Fox News' approach to compliance in the UK were not a product of an attitude that sought to prioritise commercial or other interests over regulatory compliance. We therefore did not find evidence of such conduct in the context of Fox's broadcasting operations.
157. In our view, the evidence concerning failures of corporate governance in other areas of Fox's business does not displace our assessment of the evidence relating more directly to the commitment of Fox (and the MFT) to the attainment of the broadcasting standards objectives in the UK. Our assessment of that evidence, and of Fox's approach to broadcasting standards in other jurisdictions, supports our provisional conclusion that Fox has (and MFT controlled companies have) a genuine commitment to the attainment of the broadcasting standards objectives in the UK.

Provisional finding on the broadcasting standards consideration

158. Overall, assessing all the evidence in the round, we consider that Sky, Fox and the MFT have a genuine commitment to the attainment of the broadcasting standards objectives.

159. Accordingly, we have provisionally found that, on the balance of probabilities, the Transaction may not be expected to operate against the public interest taking account of the need for persons carrying on media enterprises, and those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in Section 319 of the Communications Act 2003.