

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

Provisional findings report

Notified: 23 January 2018

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Glossary

Summary

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 impact 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 impact 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 News Corp 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 policies, systems 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.

Provisional findings

1. The reference

- 1.1 On 20 September 2017, the then Secretary of State for Digital, Culture, Media and Sport (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 proposed acquisition by 21st Century Fox, Inc (Fox) of the entire issued and to be issued share capital of Sky Plc (Sky) that Fox does not already own (the Transaction) for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 The following public interest considerations in section 58(2C) of the Enterprise Act 2002 (the Act) were specified by the then Secretary of State in the Terms of Reference:¹
- (a) 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 (the media plurality consideration); and
 - (b) 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).
- 1.3 In exercise of its duty under Article 6 of the Order, we 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;² 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;³ 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

¹ Department for Digital, Culture, Media and Sport (2017), [21st Century Fox/Sky plc Terms of Reference](#).

² Article 6(2) of the Order.

³ Article 6(3) of the Order.

adverse to the public interest which may be expected to result from the creation of the European relevant merger situation concerned.⁴

- 1.4 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 our report. However, in doing so, the Secretary of State must accept our decision on whether the Transaction amounts to a European relevant merger situation⁵ (ERMS) and shall, in particular, have regard to our 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.⁶
- 1.5 As the Transaction is anticipated and not completed we refer separately to Fox and Sky throughout this report. However, where we wish to refer to both Fox and Sky we collectively refer to them as the Parties.
- 1.6 This Inquiry also has two key related parties. These are the Murdoch Family Trust (MFT) and News Corporation (News Corp):
- (a) the MFT holds 38.4% of the voting stock in Fox and 38.4% of the voting stock in News Corp. Certain members of the Murdoch family are beneficiaries of the MFT;
 - (b) News Corp is the parent of the UK newspaper group, News UK.⁷ Among others, News UK publishes titles such as The Times, The Sunday Times, The Sun and The Sun on Sunday.
- 1.7 Our terms of reference, along with information on the conduct of the Inquiry, are in Appendix A.
- 1.8 We conduct all of our inquiries in a spirit of openness and transparency. In light of this, in this case we have published on our website:
- (a) at the start of the Inquiry a note setting out how and when third parties could contribute to the Inquiry;
 - (b) our working agreement with Ofcom and the information requests sent to Ofcom and its non-confidential responses;
 - (c) an issues statement setting out areas of concern on which the Inquiry would focus;

⁴ Article 6(4) of the Order.

⁵ Article 12(5) of the Order.

⁶ Article 12(8) of the Order.

⁷ News Corp UK and Ireland Limited.

- (d) 36 submissions (including the submissions from the Parties). A summary of the main points made in the other submissions and a summary of three confidential submissions;
- (e) transcripts of 14 hearings and summaries of a further ten hearings, along with summaries of both main party hearings, and the transcript from a roundtable event on media plurality.

- 1.9 We have reviewed around 100,000 submissions from across the three inquiry phases of the proposed Transaction (Ofcom, Secretary of State and our Inquiry). This included nearly 12,500 submissions received to date during our Inquiry. The submissions from the Parties received during phase 1 were also reviewed.
- 1.10 This report, together with its appendices, constitutes our provisional findings, published and notified to Fox and Sky in line with our rules of procedure.⁸

2. The Parties

21st Century Fox, Inc

- 2.1 Fox is a Delaware corporation⁹ whose shares are listed and traded on the NASDAQ Global Select Market. In its Securities and Exchange submissions Fox is described as a diversified global media and entertainment company with operations in the following five industry segments: (i) Cable Network Programming; (ii) TV; (iii) Filmed Entertainment; (iv) Direct Broadcast Satellite Television; and (v) Other, Corporate and Eliminations.¹⁰
- 2.2 Prior to 2013, 21st Century Fox was part of News Corporation. In 2013 News Corporation split into two distinct publicly traded companies, 21st Century Fox and the new News Corporation (News Corp). News Corp¹¹ was a newly created listed public company for which shareholders were given one new share for every four shares of the old News Corporation Class A Common Stock or Class B Common Stock, that each shareholder held. The existing News Corporation changed its name to 21st Century Fox.¹²

⁸ *CMA rules of procedure for merger, market and special reference groups (CMA17)*, rule 11.

⁹ A Delaware corporation is a business entity created under the General Corporation Law of the Delaware state code.

¹⁰ United States Securities and Exchange Commission (SEC), [FORM 10-K](#).

¹¹ At the time of the separation, the new News Corp comprised of newspapers, information services and integrated marketing services, digital real estate services, book publishing, digital education and sports programming and pay-TV distribution in Australia.

¹² Fox [statement](#) on Fox separation from News Corporation.

- 2.3 In the UK, Fox describes its principal activities as the licensing and distribution of audiovisual works for theatrical exhibition. In its initial submission to us, Fox stated that it does not own newspapers or radio stations broadcasting in the UK; nor does it own news channels available to a UK audience.¹³
- 2.4 According to its most recently available annual report and accounts, in the year ending 31 June 2017, Fox generated revenues of approximately \$29 billion resulting in a net profit of approximately \$3.2 billion.¹⁴
- 2.5 At the present, Fox owns approximately 39% of Sky and, pursuant to a voting agreement between Fox, Sky and affiliated entities, Fox may not hold more than 37.19% of all the votes that could in principle be cast at a shareholders' annual general meeting of Sky. The remainder of Sky's shares are publicly traded and widely held.

News and current affairs at Fox

- 2.6 Fox News¹⁵ is a wholly owned subsidiary of Fox. Rupert Murdoch is currently its acting Chief Executive Officer, a position he has held since July 2016 after Roger Ailes stepped down from the role he had held for 20 years in the wake of sexual harassment allegations. Fox News is the premier news outlet for Fox and an important brand for the company.¹⁶
- 2.7 Fox News was available in the UK solely to customers with a Sky subscription until Fox stopped broadcasting Fox News in the UK on 29 August 2017.¹⁷ When broadcasting, it had an estimated daily reach of around 50,000 viewers.¹⁸ Fox's rationale for removing Fox News from its UK offering on Sky is discussed in paragraph 3.10.

Fox's stated intentions in relation to Sky in the UK

- 2.8 Following its announcement of its intention to acquire the remaining shares of Sky, Fox made several public statements of intent in relation to Sky and the UK:¹⁹

¹³ Fox, [initial submission on media plurality](#), page 4, paragraph 2.4.

¹⁴ [Fox Annual Report and Accounts 2017](#).

¹⁵ Fox News Network, LLC.

¹⁶ [Fox at Morgan Stanley Technology, Media and Telecom Conference, 28 February 2017](#).

¹⁷ Reuters (2017), [Murdoch switches off Fox from UK's Sky](#).

¹⁸ Ofcom (2017), [Public interest test for the proposed acquisition of Sky plc by 21st Century Fox, Inc](#) (Ofcom Public Interest Report), page 8.

¹⁹ Fox, [Intentions in relation to the UK](#).

- (a) Fox will maintain Sky's UK HQ at the re-developed campus at Osterley and complete the £1 billion investment programme at the site;
- (b) Fox will continue to support Sky's development of Leeds as its technology hub and its Software Engineering Academy scheme which offers technology apprenticeships and graduate opportunities to young people across the north of England;
- (c) the UK will be kept as the creative hub of Sky programming and Fox intends to continue to invest in the creative community in the UK;
- (d) in aggregate, Fox and Sky invested around £700 million last year in TV and film production in the UK alone, and Fox intends to continue at least that level of investment. (Fox fully expects to build on Sky's already outstanding original content pipeline which has 1,000 hours of original programmes and 80 series in development);
- (e) Fox intends to maintain Sky's standard of excellence in respect of Sky investment in business and community initiatives. Fox is proud of the journalistic tradition of Sky News which has been one of the great innovators;
- (f) Fox will continue to broadcast news under the Sky brand maintaining its excellent record of compliance with the Ofcom Broadcasting Code.

Fox's proposed creation of 'New Fox' and merger of certain assets with Disney

- 2.9 On 14 December 2017 Fox announced that it intended to spin off to its shareholders a portfolio of its news, sports and broadcast businesses to create 'New Fox'.²⁰
- 2.10 New Fox will include the branded properties of the Fox News Channel, Fox Business Network, Fox Broadcasting Company, Fox Sports, Fox Television Stations Group, and sports cable networks FS1, FS2, Fox Deportes and Big Ten Network (BTN). It will also include the company's studio lot in Los Angeles and equity investment in streaming firm Roku.²¹
- 2.11 On the same date Fox announced that it had entered into a definitive agreement for The Walt Disney Company (Disney) to acquire the remainder of Fox for \$52.4 billion in shares. The proposed deal would see Disney gain ownership of assets such as the Twentieth Century Fox Film and TV studios, along with cable and international TV businesses. Under the terms of the

²⁰ Fox (2017), *21st Century Fox to Spin off Businesses and Create New 'Fox'*.

²¹ Fox (2017), *The Walt Disney Company to acquire Twenty-First Century Fox, Inc.*

agreement, shareholders of Fox will receive 0.2745 Disney shares for each Fox share they hold.²²

- 2.12 Disney will also acquire Fox's shareholding of Sky along with FX Networks, National Geographic Partners, Fox Sports Regional Networks, Fox Networks Group International, STAR India and Fox's interests in Hulu, Tata Sky and Endemol Shine Group. The Disney deal is subject to various regulatory approvals and Fox intends to complete the acquisition of the 61% of Sky it does not already own prior to the deal with Disney completing.²³

Sky Plc

- 2.13 Sky is a FTSE 100 public company whose shares are listed on the London Stock Exchange.
- 2.14 Sky is a leading entertainment and communications business with the UK being its largest and most profitable market.²⁴ Sky is active in a number of business segments in the UK including: licensing and acquisition of audio visual programming; the creation and distribution of 'linear' TV channels on a wholesale basis; retailing audiovisual programming to subscribers; provision of retail fixed-line telephony and broadband services; provision of mobile communication services; provision of technical platform services to broadcasters on Sky's Direct To Home (DTH) platform; provision of access to public Wi-Fi hotspots; and the sale of advertising and sponsorship on Sky services and platforms.
- 2.15 Sky provides pay TV services to residential and commercial premises in the UK, Ireland, Germany, Austria and Italy.²⁵ In the financial year ending 2017 Sky had revenues of approximately £13 billion of which £8.6 billion relates to the UK and Ireland.

The History of Sky

- 2.16 As the Chief Executive Officer (CEO) of News Corp during the 1980s, Rupert Murdoch had a key role in the establishment of Sky. Below we outline the dates in the creation of Sky:

²² Fox (2017), *The Walt Disney Company to acquire Twenty-First Century Fox, Inc.*

²³ Fox (2017), *The Walt Disney Company to acquire Twenty-First Century Fox, Inc.*

²⁴ Sky, *Annual report 2017*.

²⁵ Fox previously owned Sky Deutschland and Sky Italia which were sold to Sky in November 2014.

- (a) 1983: News Corporation set up Sky Channel, a satellite-to-cable broadcaster providing a mix of English language sports and entertainment programming to much of Europe's cable TV systems;
- (b) 1988: A consortium of media companies established British Satellite Broadcasting (BSB). In the same year, Sky Television plc (Sky TV) was formed by News Corporation;
- (c) 1989: Sky TV launched a nine-channel satellite TV service, including Sky News, a 24-hour news channel;
- (d) 1990: BSkyB is formed out of the merger of Sky TV and BSB. The newly merged company, known as British Sky Broadcasting, or BSkyB, represented a 50/50 ownership between Murdoch and the four remaining BSB investors;
- (e) 1995: BSkyB went public entering The FTSE 100 index. The offering of 20 percent of the BSkyB's shares valued the company at £4 billion. The flotation reduced News Corporation's holding to 40%;
- (f) 2013: News Corporation was separated into two separately listed companies, Fox and News Corp, with the BSkyB shares held by Fox.

Sky News

- 2.17 Sky's portfolio of TV channels includes Sky News, a 24-hour TV news channel available in the UK and the Republic of Ireland to Sky's retail pay TV subscribers, and other retail pay TV services and on free-to-air TV. Outside the UK and the Republic of Ireland, Sky also offers Sky News International, a channel which has the same news content as Sky News but with bespoke content shown during advert breaks, in Europe, Africa, Asia and the US. Sky News is provided under broadcast licences held by Sky's subsidiary Sky UK Limited.
- 2.18 In addition to its broadcast news channels, Sky News provides news content in the form of videos, graphics, and written articles and analysis on its website (www.news.sky.com). The Sky News App also allows users to livestream the Sky News channel and otherwise access and share Sky News content.
- 2.19 Sky also owns and operates Sky News Radio, the radio arm of Sky News, which supplies news to the Independent Radio News (IRN) network of radio stations in the UK. The IRN network provides more than 280 stations (including well known brands such as Absolute Radio, Capital, Classic, Heart, Magic, LBC, Smooth and talkSport) with a continuous service of national and international news, comprising live hourly news bulletins, scripts, audio clips

and a suite of pre-recorded news content. Stations incorporate this content into the bulletins they prepare, or at certain times simply rebroadcast the bulletin created by Sky News Radio. Sky News Radio also supplies digital content such as news stories in text and video to the websites of the IRN network radio stations.

- 2.20 John Ryley is the current Head of Sky News with overall responsibility for editorial standards at Sky News. Jonathan Levy is the Director of News-Gathering and Operations at Sky News and Cristina Nicolotti Squires is the Director of Content at Sky News. Mr Levy and Ms Nicolotti Squires report to Mr Ryley. In turn, Mr Ryley reports to Gary Davey, Managing Director, Content at Sky.

Related parties

The Murdoch Family Trust

- 2.21 The MFT is a trust, formed under Nevada law, for the benefit of Rupert Murdoch's family and charities. The principal beneficiaries of the MFT are Rupert Murdoch's six children²⁶ with permissible beneficiaries also including the children's descendants and organisations formed for their benefit.
- 2.22 The MFT owns a number of assets. The MFT's current holdings are:
- (a) 38.4% of Fox's Class B Common voting stock and less than 1% of non-voting stock;²⁷
 - (b) 38.4% of News Corp's Class B Common voting stock and less than 1% of non-voting stock;²⁸
 - (c) a farm in Australia, art work and cash.
- 2.23 The MFT owns 38.4% of the Class B voting shares and less than 1% of the Class A non-voting shares. Its overall economic interest in Fox is 16.6%. The MFT acts through its sole trustee, Cruden Financial Services LLC (Cruden). Cruden is managed by its six directors, who are appointed by Rupert Murdoch and his four adult children. All six directors have served since 2012.

²⁶ Prudence MacLeod, Elisabeth Murdoch, Lachlan Murdoch, James Murdoch, Grace Murdoch and Chloe Murdoch.

²⁷ As of 18 September 2017 Rupert Murdoch additionally owned less than 1% of class B voting stock, and less than 1% of class A non-voting stock.

²⁸ As of 7 August 2017 Rupert Murdoch additionally owned 1% of the company's Class B Common Stock and less than 1% of the company's Class A Common Stock.

2.24 Table 2.1 sets out the directors of Cruden and [REDACTED].²⁹

Table 2.1: Directors of Cruden and [REDACTED]

<i>Name</i>	<i>Class</i>	[REDACTED]
Jesse Angelo	Class B	[REDACTED]
Gina Cass-Gottlieb	Class B	[REDACTED]
Mark J. Devereux	Class B	[REDACTED]
David F DeVoe	Class A	[REDACTED]
Richard J. Oldfield	Class B	[REDACTED] ³⁰
Arthur M. Siskind	Class A	[REDACTED]

2.25 There are two classes of directors. Currently Class A directors have two votes and Class B directors have one. Each director must act on his or her own, consistent with the discharge of Nevada state law duties of care and loyalty.

2.26 [REDACTED] appointed Arthur Siskind and David DeVoe to Cruden in 2012. Both directors have held several positions within News Corporation, latterly now called Fox and both have held positions within Sky. Both directors are Class A directors of Cruden and therefore control 50% of the votes at directors' meetings.³¹

2.27 The other four directors are Class B directors of Cruden and as such have one vote each. Each director therefore controls 12.5% of the votes at directors' meetings.

2.28 Cruden also told us that [REDACTED].

News Corp

2.29 News Corp is a Delaware corporation whose shares are listed and traded on the NASDAQ Global Select Market. In its annual report and accounts, News Corp is described as a global diversified media and information services company.³²

²⁹ Rupert Murdoch's teenage children, Grace and Chloe are both beneficiaries of the Trust.

³⁰ [REDACTED].

³¹ [REDACTED].

³² [News Corp 2016 annual report](#).

- 2.30 Prior to 2013, News Corp was part of News Corporation. In 2013 News Corporation split into two distinct publicly traded companies, 21st Century Fox and the new News Corporation (News Corp).
- 2.31 According to its Annual Report on Form 10-K filed with the SEC, for the fiscal year ending 30 June 2017, News Corp had revenues of approximately \$8.1 billion. Total Segment EBITDA of \$885 million and a net income loss of approximately \$643 million.³³

News and current affairs at News Corp

- 2.32 News Corp holds certain of Fox's former businesses including its news and information services, book publishing, digital real estate services, and its Australian cable network programming business.
- 2.33 News Corp's operations in the UK are principally conducted through News Corp UK and Ireland Limited, trading as News UK and HarperCollins Publishers Limited. News UK publishes the following newspaper titles in print and digital formats: The Times, The Times Literary Supplement (a weekly periodical literary review), The Sunday Times, The Sun, The Sun on Sunday and The Sun Online (the combined online offering of The Sun and The Sun on Sunday). In 2016, News Corp acquired Wireless Group, which in the UK operates the talkSport, talkRadio and Virgin Radio UK national radio stations, as well as a portfolio of predominantly music-based local radio stations.

The 1981 Times Undertakings

- 2.34 When News International acquired The Times, The Sunday Times and The Times Supplements in 1981 undertakings were given to the Secretary of State for Trade. These undertakings are concerned with protecting the editorial quality and integrity of The Times, The Sunday Times and The Times Supplements and their future ownership.
- 2.35 The principal undertaking for protecting The Times papers was through Independent National Directors who served on the board of Times Newspapers Holdings Ltd. The undertakings provided for an increase in the number of Independent National Directors from four to six. Key to their role, the Independent National Directors were, and still are required to approve appointments and dismissal of editors as well as subsequent Independent National Director appointments. The editors, to be appointed by the board,

³³ SEC filing.

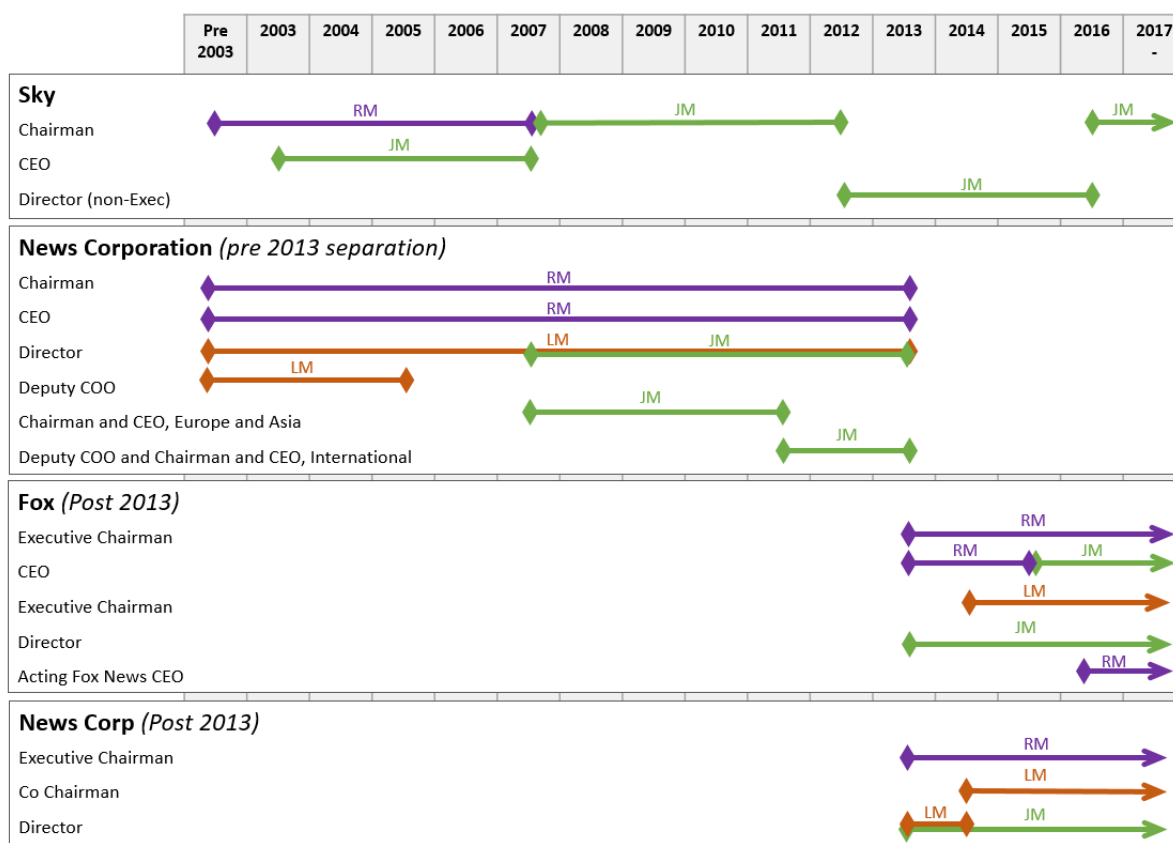
may be appointed or removed only by the agreement of a majority of the Independent National Directors.

2.36 Rupert Murdoch also undertook to preserve the separate identities of The Times and The Sunday Times, and to maintain the independence and authority of their editors in the appointment and control of their staff; ‘any political comment published in his newspaper’; and, in particular, ‘in expressing opinion or in reporting news that might directly or indirectly conflict with the opinions or interest of any of the newspaper proprietors’; and to maintain the titles as editorially independent newspapers of high quality.

Key positions held by members of the Murdoch family

2.37 Rupert Murdoch and his sons, Lachlan and James Murdoch, have all held various positions within Fox;³⁴ News Corp and Sky over many years. Figure 2.1 outlines what we consider to be the key senior positions held by each of them since 2003.

Figure 2.1: Senior positions held by Rupert, Lachlan and James Murdoch since 2003



Source: CMA

³⁴ News Corporation pre-2013.

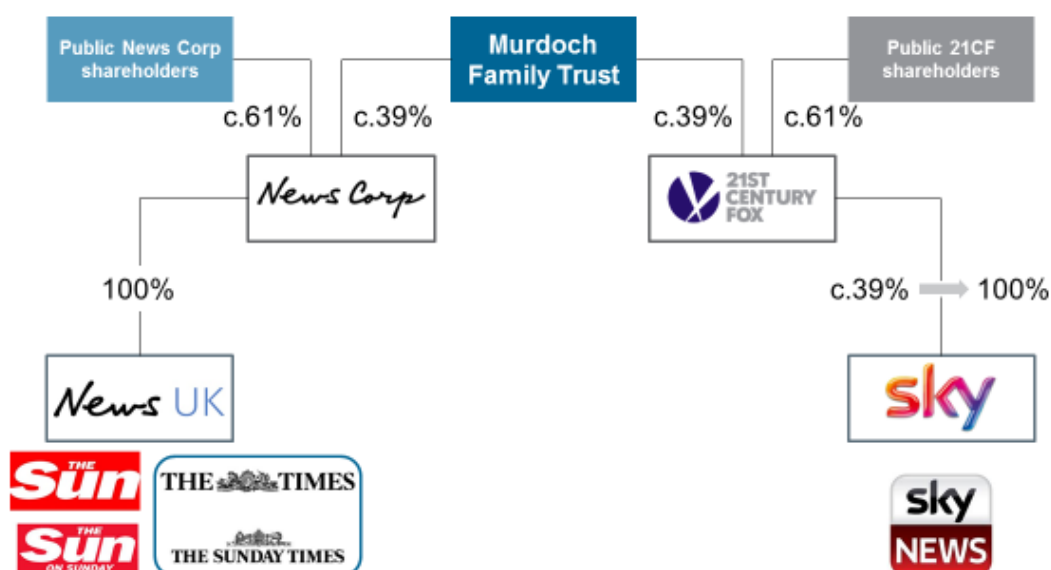
- 2.38 Rupert Murdoch's history with News Corporation stretches back to the 1970s, becoming its CEO in 1979. Having established Sky in the 1980s, Rupert Murdoch became a director at Sky in 1990, before taking on the role of Chairman in 1999, a position he held until James Murdoch took on the role in 2007.
- 2.39 Rupert Murdoch's two sons started working for Fox (then called News Corporation) in the 1990s. Lachlan Murdoch started working for News Corporation in 1994, with James Murdoch joining Fox (then called News Corporation) in 1996.

3. The Transaction

Transaction history

- 3.1 On 15 December 2016, Fox announced its intention to acquire the fully diluted share capital of Sky not already owned by Fox and its affiliates, after a Sky Committee of independent directors reached agreement with the Fox board on the terms of the deal. The Transaction would result in Fox increasing its existing shareholding from approximately 39% to 100%.

Figure 3.1: The Transaction



Source: the Parties

- 3.2 On 3 March 2017, Fox notified the European Commission of its intention to buy the shares in Sky that it does not already own.³⁵
- 3.3 On 16 March 2017, the then Secretary of State issued a European Intervention Notice (EIN) requiring Ofcom to advise her on the effects of the Transaction on the media plurality consideration and the broadcasting standards consideration.³⁶
- 3.4 On 7 April 2017, The Transaction was cleared unconditionally by the European Commission under the EU Merger Regulation.³⁷
- 3.5 In its final report on the two media public interest considerations published on 20 June 2017 (Ofcom Public Interest Report);³⁸ Ofcom concluded in relation to the media plurality consideration:

The transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, TV, in print and online. We consider that these concerns may justify a reference by the Secretary of State to the Competition and Markets Authority.³⁹

- 3.6 In relation to the broadcasting standards consideration, Ofcom concluded:

In light of Fox's and Sky's broadcast compliance records and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the Transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. Therefore, we consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority.⁴⁰

- 3.7 Also on 20 June 2017, we delivered our phase 1 report on jurisdictional matters to the then Secretary of State.

³⁵ Secretary of State for Digital, Culture, Media and Sport, *European Intervention Notice given pursuant to section 67 Enterprise Act 2001 anticipated acquisition of Sky plc by Twenty-first Century Fox, Inc.* (European Intervention Notice).

³⁶ *European Intervention Notice.*

³⁷ European Commission (2017), *Mergers: Commission clears 21st Century Fox's proposed acquisition of Sky under EU merger rules.*

³⁸ *Ofcom Public Interest Report.*

³⁹ *Ofcom Public Interest Report*, page 4.

⁴⁰ *Ofcom Public Interest Report*, page 5.

- 3.8 After the then Secretary of State considered the phase 1 reports from Ofcom and us alongside representations from the Parties to the Transaction and third parties, the then Secretary of State confirmed in a statement to parliament on 29 June 2017 that she was minded to refer the Transaction for a further, more detailed phase 2 investigation by us on media plurality grounds. After further consideration of representations received and having considered further advice that she had requested from Ofcom, the then Secretary of State announced on 12 September 2017 that she was now also minded to refer the Transaction to us on commitment to broadcasting standards grounds.
- 3.9 On 20 September 2017 the then Secretary of State referred the proposed Transaction to us on both public interest considerations.

Transaction rationale

- 3.10 Fox's stated rationale for the Transaction is as follows:

The acquisition of the entire share capital of Sky brings clarity to 21CF's capital allocation strategy and constitutes an opportunity for 21CF to achieve financial consolidation with a company in which it has held a substantial stake from the outset. The Transaction will also allow 21CF 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.⁴¹

- 3.11 Fox told us that it intends Sky News to continue to operate as an editorially independent business unit within Sky. Fox's board of directors have passed a resolution giving the independent directors oversight of the hiring and dismissal of the Head of Sky News, and of any changes to the Sky News Editorial Guidelines.⁴²

Transaction details

- 3.12 The Transaction is subject to the City Code on Takeovers and Mergers (the Takeover Code) and was announced publicly pursuant to rule 2.7 of the Takeover Code on 15 December 2016 (following the announcement of a possible offer pursuant to rule 2.4 of the Takeover Code on 9 December 2016).

⁴¹ Fox initial submission, paragraph 2.23.

⁴² Fox initial submission, paragraph 2.26.

- 3.13 The Transaction was recommended to Sky's shareholders by the independent directors of Sky. Fox envisages the Transaction proceeding by way of a court approved scheme of arrangement under part 26 of the Companies Act 2006.⁴³
- 3.14 Sky's shareholders are yet to vote on the proposed acquisition as the Parties await regulatory approval in the UK.

4. Jurisdiction and counterfactual

- 4.1 In accordance with Article 6(2) of the Order, and pursuant to our Terms of Reference, we must decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an ERMS.^{44,45}
- 4.2 Article 8(2) of the Order requires reasons for this decision to be set out in the report to the Secretary of State. The Secretary of State is required to accept our decision on jurisdiction.⁴⁶
- 4.3 In terms of the substantive assessment of the effects of the Transaction in relation to the two public interest considerations referred by the then Secretary of State, as explained in chapter 6, (see section Legal basis for our assessment of the media plurality consideration) later, section 58A of the Act enables us to take into account the activities of the MFT and the other media enterprises over which it has control or material influence, including News Corp.
- 4.4 An ERMS is defined in section 68(2) of the Act as follows:
- 'European relevant merger situation' means a relevant merger situation—
- (a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;
 - (b) by virtue of which a concentration with a Community dimension (within the meaning of the [EU] Merger Regulation), or a part of such a concentration, has arisen or will arise; and
 - (c) in relation to which a reference was prevented from being made under section 22 or 33 (whether or not there would otherwise have been a duty

⁴³ Fox initial submission, paragraph 2.21.

⁴⁴ ERMS is defined in Section 68(2) of the Act.

⁴⁵ On the 20 June 2017, we provided to the Secretary of State its phase 1 report setting out why we believed it is, or may be, the case that the Transaction will result in an ERMS.

⁴⁶ Article 12(5) of the Order.

to make such a reference) by virtue of EU law or anything done under or in accordance with it.

Creation of a relevant merger situation

- 4.5 The Transaction must meet the following criteria to constitute a relevant merger situation for the purposes of the Act:⁴⁷
- (a) there must be arrangements in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct; and
 - (b) either the value of turnover in the UK of the enterprise being acquired exceeds £70 million (the turnover test) or the 'share of supply test' is satisfied.⁴⁸

Enterprises ceasing to be distinct

- 4.6 The Act provides that enterprises will cease to be distinct when they are brought under common ownership or control.⁴⁹ Section 26 of the Act sets out how common ownership or control is to be assessed. In particular, section 26(4)(a) of the Act, provides that a person or group of persons may be treated as bringing an enterprise under his or their control if, being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in that body corporate.
- 4.7 At present, Fox owns approximately 39% of Sky. Pursuant to a voting agreement between Fox, Sky and affiliated entities, Fox's voting rights are capped at 37.19% of all the votes exercisable at Sky's shareholder meetings.⁵⁰ The remainder of Sky's shares are publicly traded and widely held. There are currently no special rights attached to the shares held by Fox. Fox accounted for an average of 44.35% of all votes cast over the period 2012 to 2016.
- 4.8 [✂].

⁴⁷ *Merger assessment guidelines (OFT1254/CC2)*, September 2010, from paragraph 3.1.3 onwards. The merger assessment guidelines have been adopted by us (see *Mergers: guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D). See also paragraph 4.1 onwards of the Guidance on the CMA's jurisdiction and procedure.

⁴⁸ Section 23 of the Act.

⁴⁹ Section 26(1) of the Act

⁵⁰ Voting Agreement between Fox, Sky and affiliated entities dated 21 September 2005.

4.9 Sky's board has 11 members. Fox does not have the right to appoint directors to Sky's board, but three of the directors are affiliated with Fox (James Murdoch,⁵¹ who chairs Sky's board, Chase Carey⁵² and John Nallen,⁵³ who are both non-executive directors of Sky). The Sky board appoints the CEO of Sky. The CEO in turn appoints senior management within Sky. Sky's board decisions are by majority vote. Strategic decisions (notably those related to the budget and the business plan) in Sky are taken at the level of the board of directors on the basis of a majority of votes.

4.10 Based on the factors set out in our guidance,⁵⁴ we consider that Fox currently has the ability to materially influence the policy of Sky within the meaning of section 26 of the Act. However, given that Fox:

(a) controls 37.19% of votes exercisable at shareholders meetings and, over the past five years, has not in practice controlled over more than half of the votes actually cast at Sky shareholders meetings; and

(b) does not have a right to appoint directors to the Sky board,

we consider that Fox does not at present have either de facto control of or a controlling interest in Sky within the meaning of section 26 of the Act.

4.11 Following the Transaction, Fox will own 100% of the issued shares of Sky and will have sole control, thereby acquiring a controlling interest in Sky within the meaning of section 26 of the Act. Fox and Sky would therefore be brought under common ownership or common control within the meaning of section 26(4) of the Act. We have therefore provisionally found that as a result of the Transaction, two or more enterprises – in this instance Fox and Sky – will cease to be distinct. Fox accepts that the Transaction will result in Fox acquiring a controlling interest in Sky, and that two or more enterprises will thereby cease to be distinct.

⁵¹ Chief Executive Officer of Fox.

⁵² Vice Chairman of Fox.

⁵³ Senior Executive Vice President and Chief Financial Officer of Fox.

⁵⁴ *Mergers: guidance on the CMA's jurisdiction and procedure (CMA2)*, paragraphs 4.14 to 4.27, defines material influence as the lowest level of control that may give rise to a relevant merger situation, in which the acquirer has the ability materially to influence policy relevant to the behaviour of the target entity in the marketplace. The policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives. There are different sources of material influence, such as shareholding, board representation, agreements or financial arrangement with a company that enable the acquirer materially to influence policy.

Turnover threshold

4.12 The turnover of Sky is £8.6 billion in the UK and Ireland,⁵⁵ of which a substantial majority is generated in the UK. The turnover test is therefore met because Sky's turnover in the UK is greater than £70 million.

Arrangements in progress or contemplation

4.13 Fox has publicly announced pursuant to rule 2.7 of the UK Takeover Code its firm intention to make an offer to acquire the fully diluted share capital of Sky not already owned by Fox and its affiliates. As at the date of these provisional findings, Fox has not completed the acquisition of the remaining shares of Sky. Accordingly, we have provisionally found that arrangements are in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct.

Concentration with a Community dimension

4.14 The European Commission in its decision of 7 April 2017⁵⁶ concluded that Fox does not currently exercise decisive influence over Sky within the meaning of the EU Merger Regulation⁵⁷ (whether on a de jure or on a de facto basis) but would acquire decisive influence over Sky as a result of the Transaction, thereby giving rise to a concentration. The European Commission also concluded that the relevant turnover thresholds were satisfied. As a result, the European Commission concluded that the acquisition by Fox of Sky constitutes a concentration with a Community dimension.

4.15 We have therefore provisionally found that as a result of this Transaction, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a concentration with a Community dimension.

4.16 In relation to those arrangements, a reference was prevented from being made under section 33 of the Act by virtue of EU law since the European Commission has asserted its exclusive jurisdiction based on Article 21(3) of the EU Merger Regulation.

⁵⁵ Sky Plc, [Annual report and accounts](#), year-end 30 June 2017.

⁵⁶ [Case M.8354 - Fox/Sky](#).

⁵⁷ Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

Conclusion on European relevant merger situation

4.17 For the reasons given earlier, we provisionally conclude that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of an ERMS.

Consideration of a ‘ceasing to be distinct’ between MFT and Sky

4.18 The European Commission’s decision left open the question of whether, for the purpose of its assessment, the MFT or any member of the Murdoch family had decisive influence under Article 3 of the EU Merger Regulation over either Fox or News Corp. However, the European Commission undertook its substantive assessment as if Fox and News Corp were under common control of the MFT as this did not affect the outcome of its competitive assessment.⁵⁸

4.19 The ability to materially influence the policy of another enterprise under the Act is a lower standard than the ability to exercise decisive influence under the EU Merger Regulation. We have therefore considered whether the change in the quality of control of Fox over Sky may give rise to a separate ‘ceasing to be distinct’ for the purposes of section 26 of the Act.⁵⁹

4.20 For the reasons given below in chapter 7, we have provisionally found that the MFT currently has material influence over Sky and, while it will be able to exercise a greater degree of control over Sky after the Transaction, this control 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.

Counterfactual

4.21 To assess the impact of the Transaction on the level of plurality and commitment to broadcasting standards, we compared the situation that we expect to arise following the Transaction to that which would exist in the absence of the Transaction (the counterfactual).

4.22 Sky submitted that it is relevant to our consideration of the counterfactual that the continued provision of Sky News should not simply be assumed when

⁵⁸ [Fox/Sky, European Commission decision](#), paragraph 24.

⁵⁹ In our phase 1 report, we highlighted that the Transaction, by removing Sky’s independent shareholders, would have the effect of removing a constraint on MFT’s exercise of control over Sky. As this was a consequence – and therefore an ‘effect’ – of the Transaction, we considered it could be examined as such. This meant it was unnecessary to take a view separately on whether the level of control which MFT exercises over Sky would increase within the meaning of section 26 of the Act as a result of the Transaction (paragraph 21).

considering the level of media plurality absent the Transaction. Sky told us that it would likely be prompted to review the position in the event that the continued provision of Sky News in its current form unduly impeded merger and/or other corporate opportunities available in relation to Sky's broader business, such as the Transaction – in particular having regard to any views expressed by shareholders regarding the denial of such opportunities.⁶⁰

4.23 However, Sky has also told us that although Sky News accounted for a small part of the Sky business and was loss-making, Sky continues to invest in it because it contributes to Sky's brand value by broadcasting accurate and impartial news.⁶¹

4.24 We therefore provisionally conclude 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.

5. Regulatory framework

5.1 In this chapter, we provide a brief overview of the regulatory framework of broadcast and non-broadcast media in the UK. A more detailed description of the regulatory framework is set out in Appendix B.⁶²

5.2 This material is intended to help provide context for the analysis set out in the provisional findings and is not intended to provide a comprehensive description of the legal and policy frameworks in place.

Overview of broadcast regulation

5.3 The Communications Act 2003 (CA03) introduced new arrangements for the regulation of broadcast media in the UK. CA03 transferred to Ofcom a range of functions previously exercised by the Secretary of State and predecessor regulators.⁶³ Ofcom is responsible, among other things, for granting licences for the provision of broadcast services in the UK, for ensuring that broadcast licence holders are 'fit and proper' persons to hold such licences and for ensuring that broadcasters comply with its Broadcasting Code which implements the broadcasting standards objectives set out in section 319(2) of

⁶⁰ [Sky's response to the CMA issues statement](#), paragraphs 4.1 to 4.3.

⁶¹ [Summary of hearing with Sky on 30 November 2017](#), paragraph 2.

⁶² We note that neither of these frameworks is, in any way, intended to exhaustively describe all of the relevant features of either the broadcast or non-broadcast media framework in the UK. Instead, the material set out is intended to set the analysis in our provisional findings into context.

⁶³ These include the Broadcasting Standards Commission, the Director General of Telecommunications, the Independent Television Commission and the Radio Authority.

CA03.⁶⁴ As set out later, Ofcom's powers and duties concern, among other things, the regulation of the broadcasting of TV and radio services, including TV programme services transmitted via the internet where the service falls under UK jurisdiction. Material placed on the internet (including by a broadcaster) which does not involve the distribution of TV or radio programme services with a view to their availability for reception by members of the public does not fall within the scope of the Broadcasting Code. On-demand programme services are subject to different regulation.⁶⁵

Scope of broadcast regulation

- 5.4 Section 319(1) of CA03 imposes a duty on Ofcom to 'to set, and from time to time to review and revise, such standards for the content of programmes to be included in **television and radio services** as appear to them best calculated to secure the standards objectives' (emphasis added). In addition, Ofcom has a general statutory duty to 'secure the application, in the case of all **television and radio services**, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services' (section 3(2)(e) of the CA03) (emphasis added). The concept of 'television and radio services' is an important one and is subject to a complex, multi-layered definition in CA03.
- 5.5 An important question concerns the extent to which online content is regulated by the Broadcasting Code and related powers and duties. Insofar as the broadcasting standards objectives are concerned, the position is, in short, that the broadcasting standards apply to TV and radio services, including TV programme services distributed for public consumption on an electronic communications network which includes the internet.⁶⁶ Online content, even if provided by a broadcaster, which does not consist of TV or radio programme services produced wholly or partly to be seen on TV and distributed in a way that makes them available for reception by members of the public, is not covered by the Broadcasting Code or the broadcasting standards objectives.
- 5.6 On-demand programme services are subject to different regulation. On-demand programme services are regulated by rules set out in part 4A of CA03.⁶⁷ CA03 lays down various rules with which service providers must comply. As well as various administrative rules covering matters such as the notification of changes to the service provided, the payment of fees by the

⁶⁴ Appendix C sets out the sections of the Broadcasting Code.

⁶⁵ On-demand services are provided for separately by part 4A (sections 368A to 368R of CA03, including specific standards requirements regarding harmful content, advertising, sponsorship and product placement.

⁶⁶ See definition of an 'electronic communications network': section 32, CA03.

⁶⁷ From 1 January 2016, Ofcom has acted as sole regulatory for on-demand programme services content. The Advertising Standards Authority remains co-regulator in relation to advertising standards content.

service provider to Ofcom and on the supply of information to Ofcom by the service provider, a number of editorial rules are also imposed. These are currently more limited in scope than those which apply to television programme services. The rules cover matters including, for example, the protection of under 18s, incitement to hatred and other forms of harmful content, sponsorship and advertising. Duties in respect of due accuracy and due impartiality are not imposed in respect of on-demand programme services. Ofcom has published some guidance in respect of such services.⁶⁸

Licensing

5.7 It is an offence under section 13 of the Broadcasting Act 1990 (the 1990 Act) to provide a ‘relevant regulated television service’⁶⁹ without a licence. Section 3 of the 1990 Act and the Broadcasting Act 1996 (the 1996 Act) provide Ofcom with the power to grant broadcasting licences. Ofcom has published guidance for applicants in respect of the various forms of broadcasting licences which may be sought.⁷⁰ Ofcom has broad powers to impose conditions on a licence holder. Ofcom may impose any conditions which ‘appear to be appropriate’ to Ofcom in the light of the duties which are, or may be, imposed on Ofcom or upon the licence holder.⁷¹ Ofcom therefore has a significant margin of discretion as to the conditions which it deems appropriate to discharge its own regulatory duties under the 1990 Act, the 1996 Act and CA03. Such conditions may exclude from the scope of a licence certain forms of content. It is also common for programming commitments to be imposed on certain types of licensee, requiring the licensee to transmit certain forms of content or limiting the nature and extent of permissible advertising.

5.8 As regards the granting of a licence, section 3(3) common to both the 1990 Act and the 1996 Act lays down a ‘fit and proper’ person test. Section 3(3) of the 1990 Act states:

Ofcom— (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and

⁶⁸ See [Rules and guidance: statutory rules and non-binding guidance for providers of on-demand programme services](#).

⁶⁹ A ‘relevant regulated television service’ is one which falls to be regulated by Ofcom under section 211 of CA03.

⁷⁰ These include, among other types of licence: DTTPS/DTAS (Digital TV Programme Service/Digital TV Additional Service); TLCS (Television Licensable Content Services); L-DTPS (Local TV); and RTSL-E (Restricted services for an event).

⁷¹ Section 4(1) of the 1990 Act and of the 1996 Act. See also section 87 of the 1990 Act and 43 of the 1996 Act.

(b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence.

A similar provision is also set out in section 3(3) of the 1996 Act. The effect of these provisions is to impose on Ofcom a duty to ensure that any new licence applicant is a fit and proper person to hold a broadcasting licence and, in addition, that any existing licensee continues to be a fit and proper person to hold such a licence. In addition, Ofcom must refuse to issue a licence to a 'disqualified person'.⁷² Ofcom has not published general guidance as to the approach it adopts in respect of the fit and proper test set out in section 3 of the 1990 Act and the 1996 Act.⁷³

Broadcasting standards

5.9 There are a number of statutory duties imposed on Ofcom in respect of broadcasting standards. These include, among other duties, the following:

- (a) CA03 imposes a duty on Ofcom 'to set, and from time to time to review and revise, such standards for the content of programmes to be included in TV and radio services as appear to them best calculated to secure the standards objectives' (section 319(1), CA03);
- (b) Ofcom has a general statutory duty to 'secure the application, in the case of all TV and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services' (section 3(2)(e), CA03);
- (c) in performing its functions (including in applying the Broadcasting Code) Ofcom must have regard to 'the need to secure that the application in the case of TV and radio services of standards ... is in the manner that best guarantees an appropriate level of freedom of expression' (section 3(4)(g), CA03).

The broadcasting standards objectives

5.10 The broadcasting standards objectives are defined in section 319(2) of CA03. These standards include due accuracy and due impartiality, a restriction on harmful or offensive material, as well as other matters including advertising,

⁷² See schedule 2, part 2 of the 1990 Act.

⁷³ A short 'Q and A' has been published: '[Fit and proper' in relation to broadcast licensees - updated](#).'

product placement, responsible broadcasting in respect of religious programmes, and the control of political advertising.

- 5.11 Section 320 (referred to in section 319(2)(c) of CA03) imposes additional 'special impartiality' requirements in respect of 'matters of political or industrial controversy' and 'matters relating to current public policy'. Insofar as such matters are concerned, the requirements of special impartiality are that broadcasters must:⁷⁴
- (a) exclude from TV and radio services (save for restricted services as per section 245 of CA03) 'all expressions of the views or opinions of the **person providing the service** on any of the matters [specified in section 320(2) of CA03]' (emphasis added);
 - (b) preserve, in the case of every TV programme service, teletext service, national radio service and national digital sound programme service, 'due impartiality' on the part of the person providing the service in respect of matters in section 320(2) of CA03.
- 5.12 Further specific provision for due impartiality is made in respect of 'major' matters of political or industrial controversy or public policy. Section 320(6) of CA03 provides that the Broadcasting Code 'must, in particular, take account of the need to ensure the preservation of impartiality in relation ... (a) matters of major political or industrial controversy' and (b) 'major matters relating to current public policy'. As explained below, specific provision is made by Ofcom in respect of major matters in section five of the Broadcasting Code. A broadcaster may satisfy the special impartiality requirements of section 320(1)(b) of CA03 by reference to a series of programmes taken as a whole.
- 5.13 The broadcasting standards objectives are given effect to by a number of codes including the Broadcasting Code, the Code on the Scheduling of Television Advertising (COSTA), the Cross-promotion Code, the Code on the Prevention of Undue Discrimination between Broadcast Advertisers (CUDBPA) and the UK Code of Broadcast Advertising (the BCAP Code).
- 5.14 All of the broadcasting standards objectives referred to previously are relevant to our consideration of the broadcasting standards consideration in section 58(2C)(c) of the Act. However, in the next section we briefly describe the manner in which certain particular standards are implemented, namely those of due impartiality, special impartiality and due accuracy. These standards are not only relevant to the broadcasting standards consideration but are also relevant to whether the Transaction would result in an insufficiency of plurality

⁷⁴ An additional duty applies in respect of radio services. See Appendix B.

insofar as it has been suggested to us that the Broadcasting Code would prevent or inhibit the extent to which editorial alignment could increase in respect of companies controlled by the MFT.

Due impartiality, special impartiality and due accuracy

- 5.15 The general requirements of due impartiality and due accuracy apply to news. An additional, broader, duty of special impartiality is set out in section five of the Broadcasting Code and applies to the broadcast of 'matters of political or industrial controversy' or 'current public policy'. These standards are discussed later.
- 5.16 Section 319(4) of CA03 makes clear that in 'setting or revising' standards set out in the Broadcasting Code, Ofcom 'must have regard ... to such extent as appears to them to be relevant to the securing of the standards objectives', to various particular matters specified in section 319(4) of CA03. These factors include, among others: the likely size and composition of the potential audience for programmes and the likely expectation of the audience as to the nature of a programme's content. In practice, Ofcom takes these contextual factors into account when applying the Broadcasting Code.⁷⁵ In drafting and enforcing the Broadcasting Code, Ofcom must also comply with the rights set out in the European Convention on Human Rights (ECHR) and, in particular, the right to private and family life (article 8) and the right to free expression (article 10).

Due impartiality and due accuracy in news

- 5.17 News must be presented with due impartiality and due accuracy (and as noted earlier, due impartiality is also relevant to coverage of matters of political and industrial controversy and public policy). Section 319(8) of CA03 clarifies that 'news' means news in whatever form it is included in a service. The Broadcasting Code clarifies that news includes news bulletins, news flashes and daily news magazine programmes.
- 5.18 The concepts of due impartiality and due accuracy are important ones. The requirements of impartiality are not absolute. Ofcom provides the following guidance as regards the concept of 'due' impartiality in the Broadcasting Code, making clear that the requirements of impartiality are context dependent.

⁷⁵ Broadcasting Code, page 5.

'Due' is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme. So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.⁷⁶

- 5.19 It is important to note at the outset that the requirement of due impartiality in respect of news does not prevent a broadcaster from adopting its own interpretation in respect of the news items it presents. Ofcom's guidance on section five of the Broadcasting Code makes clear '[i]n accordance with a broadcaster's right to freedom of expression, the broadcaster has the right to interpret news as it sees fit, as long as it complies with the Code'. Thus, in presenting news it is permissible for broadcasters to adopt a particular 'take' on news items subject to the overall duty of due impartiality. This means that the same news item (or news generally) may be interpreted or analysed differently by, for example, Channel 4 News or Al Jazeera or by ITN or BBC News. The Broadcasting Code affords a degree of latitude to each broadcaster to adopt its own interpretation.
- 5.20 As well as the interpretative discretion afforded to broadcasters by the Broadcasting Code, Ofcom's guidance on the application of the Broadcasting Code (the Guidance Notes) makes clear that contextual factors, such as audience expectations or the degree of public interest attaching to a particular item, may be important in determining what due impartiality requires in a particular instance, including in respect of news coverage.⁷⁷ For example, in November 2017 Ofcom issued a breach decision against Fox News in respect of 'Hannity' broadcast on 31 January 2017, in which the programme covered Donald Trump's Executive Order restricting travel to the US from seven majority-Muslim countries. In its decision, Ofcom found Fox News to breach various provisions of the Broadcasting Code⁷⁸ but noted that it had 'taken into account the fact that Fox News is a US channel, directed at US audiences, which is available in the United Kingdom' in assessing the requirement of due

⁷⁶ Broadcasting Code, section five, page 28.

⁷⁷ [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.4.

⁷⁸ The programme breached rules 5.9, 5.11 and 5.12.

impartiality.⁷⁹ The requirements of due impartiality may therefore vary, to some degree, depending on audience expectations in respect of the channel in question. Despite the fact that there exists a degree of latitude in respect of the presentation of news, it is important to note that the latitude to adopt a particular perspective will typically be significantly greater in the context of authored or personal view programmes. This is discussed further later.

- 5.21 As well as the duty of due impartiality, news must also be presented with due accuracy. The concept of due accuracy is not expressly defined in the Broadcasting Code. However, in its supplementary Guidance Notes, Ofcom makes clear that the reference to due accuracy indicates that, like impartiality, the degree of accuracy required in a particular instance may vary according to context (for example, the subject-matter of the programme or its intended audience).⁸⁰ Ofcom also makes clear that where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher.⁸¹ The concepts of due impartiality and due accuracy are interpreted and applied by Ofcom in line with the requirements of the right to freedom of expression set out in article 10, ECHR.⁸²

Special impartiality in respect of political, industrial and policy matters

- 5.22 Section five of the Broadcasting Code makes clear:

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions etc.⁸³

- 5.23 The person providing the broadcasting service must not, in general, adopt and express views in respect of any of these matters and must remain impartial in respect of them. This requirement is further explained in rules 5.4 and 5.5 of the Broadcasting Code, which explain:

⁷⁹ *Ofcom Broadcast and On-Demand Bulletin*, 6 November 2017, issue no. 341, page 5.

⁸⁰ *Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five*, paragraph 1.7.

⁸¹ *Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five*, paragraph 1.7.

⁸² *Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five*, paragraph 1.9.

⁸³ Broadcasting Code, section five, page 29.

Programmes ... must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

Due impartiality on matters of political or industrial controversy and current public policy must be preserved on the part of any person providing a service (listed earlier). This may be achieved within a programme or over a series of programmes taken as a whole.

- 5.24 The position in respect of personal view or authored programmes is somewhat different. Rule 5.9 of the Broadcasting Code makes clear that - with the exception of news presenters and reporters in news programmes - presenters of 'personal view' or 'authored' programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. The Broadcasting Code makes clear that 'in dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes'. In practice, where a programme covers a major matter, Ofcom will scrutinise the broadcast with a greater degree of intensity.
- 5.25 As with the news, context is also important in the application of the due impartiality standard to matters of political or industrial controversy or public policy. As earlier noted, when assessing due impartiality, Ofcom takes into account a range of factors – including whether the programme, channel or service is aimed at a UK audience. In particular, Ofcom considers that the likely expectation of the audience as to content and the extent to which the content is signalled to the audience is a key consideration in its assessment. In that regard, Ofcom considers that UK audiences may have different expectations of impartiality for a channel which is aimed primarily at a UK audience than for an overseas channel broadcasting in the UK, but which is aimed at an expatriate audience.
- 5.26 In short, the effect of this approach to the interpretation and application of the Broadcasting Code is that broadcasters are, to some extent, able to adopt their own approach to the presentation of news and current affairs more generally. The degree of latitude or discretion available to broadcasters depends on factors including whether the programme is a news programme, an authored or personal view programme or whether the programme

addresses matters of political or industrial controversy or public policy or major matters. As explained earlier, a degree of discretion is available to broadcasters to adopt their own interpretation of the news. A greater degree of discretion to adopt a stance or position is available in respect of personal view or authored programmes, including various forms of discussion programme. In addition, the requirements of due impartiality will depend on the degree of public interest in the matter discussed and, in particular, whether it is regarded as a major matter of political or industrial controversy or public policy in which case there is a particular onus on broadcasters to canvass alternative viewpoints. Moreover, the requirements of due impartiality depend on a range of other contextual factors including audience expectation and the nature of the programme in question.

- 5.27 There are a number of matters which the Broadcasting Code does not directly address and which are largely left to the editorial judgment of broadcasters. In particular, the Broadcasting Code does not generally seek to address editorial prioritisation or the editorial ‘agenda’ adopted by a broadcaster. As Ofcom notes in its Public Interest Report, in relation to the broadcasting standards consideration:⁸⁴

The provisions of the Broadcasting Code cannot address editorial decision making in terms of which stories may be prioritised. The Broadcasting Code does not seek to influence such editorial decisions and to do so would raise serious concerns around freedom of speech. In any event, such influence may take subtle forms which would not be picked up by the Broadcasting Code, for example through the selection or omission of particular news items.⁸⁵

- 5.28 Ofcom also emphasises this position in section 9 of its Public Interest Report.⁸⁶ We note, therefore, that it is permissible for a broadcaster to have a particular editorial focus or set of interests which it tends to promote or pursue. Such editorial decision making encompasses, among other things: decisions as to which items to cover or which to omit; the amount of airtime to give to particular stories or issues; the prominence accorded to particular types of stories or the tone of coverage or the analytical level at which it is pitched. The Broadcasting Code does not generally seek to regulate these matters. This can be seen in practice. The editorial approach of Channel 4

⁸⁴ We note that in its [initial submission on media plurality](#), Fox relies on a joint opinion of Lord Pannick QC and David Lowe, which finds that the Broadcasting Code does apply to the relative prominence afforded to a news story or type of story.

⁸⁵ [Ofcom Public Interest Report](#), paragraph 8.39.

⁸⁶ [Ofcom Public Interest Report](#), paragraph 9.13.

News, for example, is distinctive from that of ITV or BBC News. Various contributors in our roundtable discussion on media plurality noted that Channel 4 News had distinctive values which informed its editorial approach.⁸⁷ Such a distinctive approach to news or current affairs more generally is not precluded by the Broadcasting Code. In addition, it should also be noted that the reach of the Broadcasting Code is limited. Website and on-demand content produced by broadcasters, even where relating to news, is not generally covered by the Broadcasting Code unless produced wholly or partly to be seen on TV and distributed in a way that makes them available to members of the public. Broadcasters therefore have greater latitude in respect of editorial decision making in respect of online and on-demand content.

Monitoring and enforcement

5.29 As regards monitoring, Ofcom does not continuously monitor compliance with the Broadcasting Code and licensing requirements by all licensees given the resources required. Ofcom takes a risk-based approach to identifying services which it considers should, from time to time, be monitored. Where Ofcom finds that the Broadcasting Code has been breached it has a range of remedial and punitive powers at its disposal. Remedial measures can include on-air corrections as well as financial penalties, licence suspension and licence revocation, which may be appropriate in the case of more serious or repeated breaches.

Newspaper regulation in the UK

5.30 Detailed explanation of the system of newspaper regulation in the UK is set out in Appendix B. However, by way of brief overview, the system for the regulation of newspapers is quite different from the system for the regulation of broadcasting. Crucially, whereas broadcasters are under a duty of impartiality there is no such duty on newspaper. Newspapers are, almost invariably, partisan in their approach to all manner of political or public policy issues. The nature of regulation is also quite different in the context of newspapers. In contrast to broadcasters, which are subject to a regime of compulsory regulation overseen by Ofcom, newspapers are self-regulating.

5.31 Following the publication of the findings of the Leveson Inquiry in November 2012, the landscape of newspaper self-regulation in the UK has changed substantially. In line with the recommendations of the Leveson Inquiry a Press Recognition Panel (PRP) was established on 3 November 2014 by Royal

⁸⁷ [Transcript of media plurality roundtable](#), for example see page 20.

Charter. The PRP is empowered to confer recognition upon a self-regulatory body established by newspapers where that body complies with the Charter Recognition Criteria laid down in schedule 3 of the Royal Charter. These requirements cover a range of matters including, among others, the independence of the regulator, the availability of complaints processes as well as the regulator's investigative and sanctioning powers. Since the Leveson Inquiry, two self-regulatory bodies have been established to regulate the press: the Independent Press Standards Organisation (IPSO) and IMPRESS. IPSO was established on 8 September 2014 following the dissolution of the Press Complaints Commission (PCC). IPSO has not sought recognition from the PRP but, in practice, IPSO regulates the vast majority of UK newspapers. Indeed, IPSO regulates almost all major UK national daily titles (90% by circulation) including The Sun, The Times and The Sunday Times. However, not all major publications fall within its remit (for example, IPSO does not regulate The Guardian or The Observer, The Financial Times or The Evening Standard). IMPRESS was approved by the PRP as a recognised regulator on 25 October 2016. Presently, none of the main newspaper publishers in the UK are regulated by IMPRESS. In particular, none of News Corp's UK titles (such as The Sun, or The Times) are regulated by IMPRESS.

- 5.32 There are now two codes of practice for the self-regulation of newspapers in operation in the UK: the Editors' Code of Practice (the Editors' Code) and the IMPRESS Standards Code. IPSO applies the Editors' Code, which sets out the rules that newspapers and magazines regulated by IPSO have agreed to follow. The Editors' Code is written and administered by the Editors' Code Committee and enforced by IPSO. The Editors' Code Committee is separate from IPSO (although the Chair of IPSO, Sir Alan Moses, and the Chief Executive of IPSO, Matt Tee, are also Editors' Code Committee Members).

Media plurality consideration

6. Framework for the media plurality consideration

- 6.1 The media plurality consideration is set out in section 58(2C)(a) of the Enterprise Act 2002 (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.

- 6.2 The statutory question that we are required to answer is whether, taking account of the media plurality consideration, the anticipated acquisition of Sky by Fox (the Transaction) may be expected to operate against the public interest.⁸⁸
- 6.3 This chapter sets out:
- (a) the legal basis for our assessment of the media plurality consideration;
 - (b) the analytical framework we have used to assess the media plurality consideration, including:
 - (i) the extent to which the Murdoch Family Trust's (MFT) control over Sky will increase as a result of the Transaction;
 - (ii) whether, taking into account the extent of the MFT's increased control over Sky, the Transaction may be expected to lead to a reduction in the plurality of persons with control of media enterprises serving the relevant audience; and
 - (iii) whether the remaining plurality of persons with control of media enterprises would be sufficient following the Transaction.
- 6.4 Our approach has been informed by the context for the introduction of the media plurality consideration into the Communications Act 2003 (CA03) and the subsequent development of policy discussion regarding media plurality. In that regard, the explanatory notes relating to the media plurality consideration state that it is concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons.⁸⁹
- 6.5 Further background to the media plurality consideration and the development of policy relating to media plurality and cross-media ownership is summarised in Appendix D, which sets out:
- (a) the context in which the media plurality consideration was adopted in 2003 and the current rules on cross-media ownership;
 - (b) how the concept of media plurality has been interpreted and applied since 2003, including taking into account the Court of Appeal's judgment in

⁸⁸ Article 6(3) of the Order.

⁸⁹ [Explanatory notes to section 375 of the Communications Act 2003](#).

2010 in relation to British Sky Broadcasting Group Plc's acquisition of 17.9% of the shares in ITV plc (BSkyB/ITV);⁹⁰ and

(c) Lord Justice Leveson's consideration of media plurality in the Leveson Inquiry and subsequent developments.

6.6 We have been mindful of the importance given to media plurality in statements made by the government, politicians and guidance produced at the time of the insertion of the media plurality consideration into the Act and since. By way of example, a government briefing note prepared around the time of the consultation on the Communications Bill that resulted in the inclusion of the media plurality consideration in the Act succinctly explains the importance to democracy of a diversity of media content from a plurality of sources:

Our democracy and our cultural vitality depend on the availability of a range of different media voices, views and styles. The ownership of our newspapers, television and radio is therefore of the utmost importance...

Plurality is not about content but the source of that content, the 'voice' behind it – the owner. A plurality of voices should: –

- ensure no individual has excessive control over the democratic process;
- provide a plurality of sources of news and editorial opinion, preserving the culture of dissent and argument on which our democracy rests;
- prevent the emergence of any one source able to control the news agenda by the inclusion / omission of particular stories;
- maintain our cultural vitality by ensuring that different companies exist to produce different styles of programming and publishing, each with a different look and feel.⁹¹

6.7 We set out in Appendix D the development of guidance relating to media plurality and past application by Ofcom and the Competition Commission (CC). We note, however, that the Act itself does not provide any guidance on

⁹⁰ British Sky Broadcasting Group plc v The Competition Commission [2010] EWCA Civ 2.

⁹¹ Briefing note for the Secretary of State, DCMS relating to 'the announcement of our consultation on media ownership', 23 November 2001, Annex B (cited in the Leveson Report, Volume 3, Part I, Chapter C, paragraph 5.12 (page 1,281) and submitted to the Leveson Inquiry [as Exhibit TJ13 to the witness statement of Tessa Jowell MP, 21 May 2012](#)).

what constitutes ‘sufficiency’ in the context of the media plurality consideration.

Legal basis for our assessment of the media plurality consideration

6.8 Section 58A of the Act contains definitions and other guidance for the interpretation and application of section 58, including the media plurality consideration in section 58(2C)(a). It includes:

- (a) definitions of what constitutes a ‘media enterprise’ and a ‘newspaper enterprise’;⁹²
- (b) guidance relating to the number of media enterprises deemed to be serving a relevant audience;⁹³
- (c) guidance relating to the treatment of who should be deemed to control relevant media enterprises;⁹⁴ and
- (d) guidance on how to construe the relevant audience served by a media enterprise.⁹⁵

6.9 We consider each of these points in turn below.

Interpretation of a ‘media enterprise’ and ‘newspaper enterprise’

6.10 Section 58A(1) to (3) states:

(1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves broadcasting.

(2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.

(3) In this Part ‘newspaper enterprise’ means an enterprise consisting in or involving the supply of newspapers.

6.11 Fox and Sky are both enterprises involved in broadcasting and, as set out in chapter 4, will cease to be distinct as a result of the Transaction. News Corp

⁹² Section 58A(1) to (3).

⁹³ Section 58A(4).

⁹⁴ Section 58A(5).

⁹⁵ Section 58A(6) to (8).

is an enterprise that is involved in the supply of newspapers and therefore, for the purposes of section 58(2C)(a) and section 58A, is to be considered a media enterprise.

- 6.12 We note that the statutory definition of media enterprise does not specifically include an enterprise that only consists of or involves online media related activities, ie one that provides content using the internet and is not involved in broadcasting or the supply of newspapers. The Parties and News Corp each have online media related activities, but fall within the statutory definition of media enterprise because they are also involved in either broadcasting or the supply of newspapers. However, we have also taken into account in our assessment the online activities of the Parties and News Corp – and those of other content providers. This reflects the fact that online is one of the main platforms for the delivery of content.⁹⁶

Legal framework for assessment of persons with control of the relevant media enterprises

- 6.13 Section 58A(4) and (5) of the Act provides guidance relating to the number of media enterprises deemed to be serving a relevant audience and the treatment of who should be deemed to control relevant media enterprises.

Media enterprises serving the same audience

- 6.14 Section 58A(4) of the Act states:

Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards.

- 6.15 Section 58A(4) operates to ensure that in situations where a relevant merger situation arises from an increase in the level of existing control, eg from material influence to de facto control or from de facto control to a controlling interest, merging enterprises cannot argue that the added level of control makes no difference on the basis that there has been no change to the number of media enterprises serving a particular audience. This view is

⁹⁶ In that regard, we also note broad consensus that online distribution should be included in any assessment of media plurality. For example, see the recommendation of the Leveson Inquiry and the government's response to its July 2013 consultation on media ownership and plurality (see: Leveson Inquiry, Part I, Chapter 9, paragraph 2.11 (page 1,464); and DCMS, Media Ownership and Plurality Consultation Report, 6 August 2014, page 12. See also Appendix D.

consistent with the position set out in the relevant explanatory notes,⁹⁷ the DTI Guidance,⁹⁸ and the Court of Appeal's judgment in BSKyB/ITV.⁹⁹

- 6.16 The effect of section 58A(4) is that the assessment of the media plurality consideration should be conducted on the assumption that there were more media enterprises serving the relevant audience before the Transaction than there will be after the Transaction. We do not, however, consider that section 58A(4) creates a presumption that plurality is reduced by the Transaction. It is necessary to establish whether this is in fact the case on the basis of a substantive assessment of the impact of the Transaction.

Treatment of persons with control of media enterprises

- 6.17 Section 58A(5) of the Act states that:

For the purposes of section 58, where two or more media enterprises –

(a) would fall to be treated as under common ownership or common control for the purposes of section 26, or

(b) are otherwise in the same ownership or under the same control

they shall be treated (subject to subsection (4)) as all under the control of only one person.

- 6.18 The Court of Appeal considered the statutory interpretation of section 58A(5) in detail in BSKyB/ITV, noting that this was 'far from easy' and observing that it

⁹⁷ The explanatory notes to section 375 of CA03 (which inserted section 58A into the Act) state: 'New section 58A(4) makes clear that where a merger situation (ie a relevant merger situation or a special merger situation) involves two media enterprises serving the same audience, then there is deemed to be a reduction in the number of such media enterprises for the purposes of the plurality assessment in subsection (2C)(a). This means that all such mergers, including those involving an increase in levels of control of such media enterprises, may be scrutinised for the purposes of subsection (2C)(a), even though the number of enterprises may in fact be unchanged'.

⁹⁸ DTI, *Enterprise Act 2002: Public Interest Intervention in Media Merger: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers (May 2004)*. See paragraph 7.13 which states that clause 58A(4), 'means that the Secretary of State can assess whether, as a result of the merger, there will be a sufficient plurality of persons with control of enterprises serving the relevant audience even though the number of enterprises serving that audience may be unchanged'.

⁹⁹ See paragraph 93 which states that:

'section 58A(4) is a particular provision which is needed because ... the three different levels of control [under s26 of the Act] may mean that an enterprise, A, which already has the lowest level of control over another enterprise, B, so that they have ceased to be distinct, may gain an increased level of control. In that event B is again treated as being brought under the control of A and they cease to be distinct for a second time under section 26(1). Section 58A(4) precludes an argument that, because B is already under the control of A at the start, the added level of control makes no difference, and the number of enterprises serving the relevant audience is the same before and after the RMS'.

was unsatisfactory that the terms of the Act should have been open to conflicting interpretations.¹⁰⁰ It held that:

whereas in reckoning the number of controllers of media enterprises for the purposes of section 58(2C)(a) only one controller is to be counted in respect of both or all of the relevant enterprises ..., nevertheless, when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the [CC] may, and should, **take into account the actual extent of the control exercised and exercisable** over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control.¹⁰¹ (emphasis added)

- 6.19 The Court of Appeal's judgment makes it clear that section 58A(5) applies to the calculation of the number of controllers of media enterprises serving the relevant audience. We therefore interpret the statutory framework as permitting us to take into account, in our assessment of the media plurality consideration, those media enterprises serving the relevant audience over which the MFT has common material influence or control. The Parties do not dispute this.¹⁰²
- 6.20 For the reasons given in chapter 7, we have provisionally found that the MFT has material influence for the purposes of section 26 of the Act over Fox, Sky and News Corp. We are therefore permitted to take into account Fox, Sky and News Corp, to the extent that they serve the relevant audience, in our assessment of the media plurality consideration.
- 6.21 However, the Court of Appeal's judgment makes it clear that section 58A(5) does not have an overriding effect. This means that as part of our assessment of the sufficiency of plurality of persons with control of media enterprises following the Transaction, we are required to carry out a qualitative assessment of the actual extent of control exercised and exercisable by a controller over the media enterprises it is deemed to control. We have therefore not based our assessment of the media plurality consideration on the premise that the MFT can be deemed to have full control over Fox, Sky and News Corp. In other words, we have not assumed that the MFT, Fox, Sky and News Corp are to be treated as a single entity.

¹⁰⁰ Court of Appeal, BSkyB/ITV, paragraphs 119 and 123.

¹⁰¹ Paragraph 121 Court of Appeal BSkyB/ITV judgment.

¹⁰² Fox, [initial submission](#), paragraph 3.5.

6.22 We therefore consider that for the Transaction to give rise to concerns in respect of the media plurality consideration it is necessary for there to be a material change in the actual extent of control exercised and exercisable by the MFT over Sky and Sky News¹⁰³ as a result of the Transaction.

Interpretation of relevant audience

6.23 Section 58A(6) to (8) of the Act provides guidance on the interpretation of 'audience' for the purpose of the media plurality consideration. This section gives us wide discretion in construing the relevant audience that we consider appropriate for our assessment of the Transaction. Our provisional view is that for the purpose of our assessment the relevant audience is a single national audience for news and current affairs, without identifying particular subgroups, whether based on socio-economic or regional distinctions, as separate audiences.

6.24 While the Act does not limit the assessment of the media plurality consideration to a particular genre or type of content, we have focused our assessment on the plurality of persons with control of media enterprises involved in news and current affairs. We have done this on the basis that there is a broad consensus that this is appropriate and practicable, given that news and current affairs is the type of content that has most relevance to media plurality.¹⁰⁴ We have consequently focussed our assessment of plurality on Sky News as the broader range of wholly owned Sky channels do not carry news bulletins or regularly provide news or current affairs programming.¹⁰⁵ Our assessment of control takes into account control exercised and exercisable over Sky and (where relevant) Sky News.

6.25 We have taken into account in our assessment news and current affairs content provided by media enterprises on TV, radio, online and in newspapers. As explained previously in paragraph 6.12, while we note that the media plurality consideration does not refer to online-only media enterprises, we consider that the online provision of news and current affairs should be included in the assessment of the media plurality consideration.

¹⁰³ In relation to the focus on Sky News see paragraph 6.24 .

¹⁰⁴ See, for example, the Leveson Report, Part I, Chapter 9, paragraph 2.8 (page 1484); House of Lords Select Committee on Communication, Report into Media Plurality, 4 February 2014, paragraph 27; and DCMS response to the House of Lords Select Committee on Communications Report into Media Plurality, 6 August 2014, page 12.

¹⁰⁵ A possible exception is Sky Sports News, a channel which provides dedicated sports news and current affairs content, we do not, however, consider sports news and current affairs to be within the focus of our assessment.

Framework for the assessment of the extent of the MFT's control over Sky

6.26 We set out in this section the basis for our approach to assessing:

- (a) the actual extent of the control exercised and exercisable by the MFT over Sky and Sky News following the Transaction; and
- (b) our consideration of the implications of 'internal plurality'.

Actual extent of the MFT's control over Sky

6.27 We have assessed the actual extent of control exercised and exercisable by the MFT over Sky and Sky News before the Transaction, and the impact of the Transaction on the extent of this control. This assessment is set out in chapters 7 and 8.

6.28 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.

6.29 The Parties have submitted that:

- (a) this approach to the assessment of control by the MFT fails to take into account the extent of control that will actually be exercised by the MFT over Sky and Sky News post Transaction;
- (b) our approach is wrong because it seeks only to take account of speculative levels of control theoretically exercisable by the MFT, and does not take account of the actual level of control exercised or exercisable in practice by the MFT over Fox, and over Sky, as required by the Court of Appeal in BSkyB/ITV; and
- (c) neither Fox nor the MFT have to date sought to influence the content, strategy or editorial direction of Sky News and that neither Fox nor its management would exercise control over editorial matters at Sky News following the Transaction. This includes periods when James Murdoch was CEO of Sky. Rupert Murdoch has similarly never sought to influence the content, strategy or editorial direction of Sky News including when he held senior roles in Sky including as chairman. All of which supports the conclusion that neither Fox nor its management would exercise control over editorial matters at Sky News following the Transaction.

6.30 We consider that our approach, in taking into account the extent of exercisable control (both pre and post Transaction) is consistent with the

Court of Appeal's judgment in BSkyB/ITV (referred to earlier). We also consider that this approach properly 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.¹⁰⁶

- 6.31 In our view, a transaction may operate contrary to the public interest where it leads to a controller of media enterprises having the ability to exercise a greater degree of control, leading to an over concentration of control of media enterprises in the hands of that person. The fact that a controller (as presently constituted and taking into account the actual control it has historically exercised) advances a position that it will not, or does not intend to, exercise that control post transaction is not determinative of that concern.¹⁰⁷ Moreover, 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.
- 6.32 Furthermore, we consider 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, whereas the qualitative assessment required is not restricted to the extent of control likely to be exercised in the period immediately post transaction. Subject to the constraints identified by the Parties and discussed below in chapters 7 and 8, any assessment of what control will be exercisable post Transaction must properly take into account the ability of the MFT to increase the degree of control actually exercised over Sky and Sky News in the future.
- 6.33 We consider that the statute, as construed by the Court of Appeal in BSkyB/ITV, takes account of the fact that it would not be possible to review the implications for media plurality arising from any such increase in the control actually exercised (as it would not be subject to regulatory scrutiny). We consider the approach adopted by the statute reflects the fact that: (i) 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; (ii) sufficiency is not subject to continual regulatory scrutiny; and (iii) if sufficiency of plurality is lost, it may be difficult or impossible to restore. In those circumstances, the

¹⁰⁶ See: [Explanatory notes to section 375 of CA03](#) and [DTI Guidance](#), paragraph 7.7. The Court of Appeal also stated that 'the criterion of sufficiency, for this purpose, seems to be the need to avoid over-concentration of the market' (paragraph 88, Court of Appeal judgment in BSkyB/ITV).

¹⁰⁷ As stated by Lord McIntosh (then parliamentary Under-Secretary of State for Broadcasting at DCMS) in the House of Lords debates during the passage of the Communications bill through parliament: 'Media plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any one person to control too much of the media because of his or her ability to influence opinions and set influence the political agenda' (See [Hansard House of Lords debates, 2 July 2003, Cols 912-913](#)).

analysis of the sufficiency of plurality must properly take into account the potentially adverse effects of such an over-concentration as a result of the extent of control which is exercisable post transaction.

- 6.34 In considering this issue, we take account of evidence and submissions which have been put to us about how any additional control acquired is likely to be exercised in the present case. We have not placed weight upon levels of control which we regard as merely theoretical, as the Parties have suggested. At the same time, however, we do not consider that a merger may only be expected to operate against the public interest where it is possible to conclude, on the evidence available, that the control is likely to be exercised in a particular way.
- 6.35 In carrying out our assessment, we take account of the fact that the level of control currently exercised by the MFT over Sky and Sky News may be less than the level of control that is currently exercisable. We note that in such circumstances, comparing the extent of control currently exercised with the extent of control exercisable post Transaction would exaggerate the degree of change in control brought about by the Transaction. As set out in chapter 7, we have also compared the extent of control currently exercisable by the MFT over Sky and Sky News with the extent of control exercisable by the MFT over Sky and Sky News following the Transaction.

Approach to ‘internal plurality’

- 6.36 While noting that the concern the statute seeks to guard against is the control of media enterprises being over-concentrated in the hands of a limited number of persons, we have also taken account of ‘internal plurality’ in our assessment. In line with the Court of Appeal’s judgment in BSkyB/ITV, this has regard to the actual degree of control exercised over a media enterprise and whether that control would in practice enable the controlling enterprise to dominate the policy and output of the controlled enterprise.¹⁰⁸ The concept of 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. In this context, our consideration of internal plurality includes the effects of the internal governance in place within the relevant media enterprises, the culture of newsrooms, audience expectations, and the impartiality rules in the Broadcasting Code.

¹⁰⁸ Court of Appeal judgment, BSkyB/ITV, paragraph 80.

6.37 The concept of internal plurality in relation to the media plurality consideration was considered by the courts in the context of the BSkyB/ITV transaction:

- (a) the CC in BSkyB/ITV considered that it was appropriate to distinguish between external plurality and internal plurality;¹⁰⁹
- (b) the Competition Appeal Tribunal (CAT) disagreed, referring to the fact that '[i]t would hardly be surprising if parliament, desiring to ensure more than short term protection, took an approach to sufficiency of plurality of media ownership which discounted possibly ephemeral concepts such as 'internal plurality' which may be dependent upon the degree of control remaining static'.¹¹⁰ The CAT therefore found that the CC had misdirected itself by taking into account irrelevant considerations: 'namely the degree of control which Sky was in fact able to exercise over ITV, together with what the [CC] called the "internal plurality" or range of information and views provided from within media enterprises'.¹¹¹
- (c) the Court of Appeal, in overturning the CAT's judgment in relation to the assessment of the degree of control which Sky was in fact able to exercise over ITV, noted that it was a 'fair comment that what the [CC] called internal plurality could possibly be reduced in practice without an event occurring which triggered a change in the level of control or deemed control'.¹¹² However, it further stated that:

where the internal plurality exists despite the merger because one media enterprise has material influence over another, but no more, and the other is largely able to pursue its own independent policy and strategy as regards broadcasting style and content, it is not clear that there is a real risk of significant change in the degree of internal plurality short of an increase in the level of control which, in the present case, cannot happen because of the 20/20 rule.¹¹³

6.38 We consider that internal plurality is a relevant consideration to take account of in our assessment of the impact of the Transaction and we have had regard to this in chapter 8 below. However, for the reasons given in paragraphs 6.27 to 6.35, we consider that we should attach most weight to the degree of

¹⁰⁹ Competition Commission, BSkyB/ITV, paragraph 5.11.

¹¹⁰ British Sky Broadcasting Group plc v The Competition Commission [2008] CAT 25, judgment of 29 September 2008, paragraph 263.

¹¹¹ British Sky Broadcasting Group plc v The Competition Commission [2008] CAT 25, judgment of 29 September 2008, paragraph 263.

¹¹² Court of Appeal, BSkyB/ITV, paragraph 104.

¹¹³ Court of Appeal, BSkyB/ITV, paragraph 104.

control which would be exercisable by the MFT over Sky and Sky News following the Transaction when assessing:

- (a) the impact of the various constraints and safeguards identified by the Parties (including, the resolution that the Fox board has passed relating to the governance of Sky News, the culture of the Sky News newsroom, audience expectations and the impartiality requirements of the Broadcasting Code); and
- (b) whether evidence of historic internal plurality within the media enterprises controlled by the MFT mitigates the concerns we identify in our assessment.

6.39 In that regard, we note:

- (a) the CAT's view about the possibility of creeping influence over time and the fact that editorial independence may well be susceptible to change;¹¹⁴ and
- (b) that, in relation to the CAT's concern, the Court of Appeal stated that where this possibility might exist we are entitled to take it into account in considering the sufficiency of plurality of persons with control of media enterprises.¹¹⁵

6.40 We also consider that the specific facts of BSkyB's acquisition of 17.9% of ITV were significantly different from the circumstances in the Transaction, meaning that there was limited risk of there being a significant change in the degree of internal plurality. In particular, it was highly relevant to the CC's assessment and the Court of Appeal's judgment that the 20/20 rule capped the ability of BSkyB to build up a significantly larger stake in ITV.¹¹⁶ It was also relevant that ITV contracted out its news programming to ITN and that the transaction did not give BSkyB the ability to exert significant commercial influence over ITV's news output or more widely over ITN.¹¹⁷

Framework for assessment of the impact of the Transaction on plurality and the sufficiency of that plurality

6.41 The Act does not provide any guidance on what is meant by the phrase 'sufficient plurality of persons with control of ... media enterprises', how to

¹¹⁴ British Sky Broadcasting Group plc v The Competition Commission [2008] CAT 25, judgment of 29 September 2008, paragraph 263.

¹¹⁵ Court of Appeal, BSkyB/ITV, paragraph 122.

¹¹⁶ Court of Appeal, BSkyB/ITV, paragraph 104.

¹¹⁷ Competition Commission, BSkyB/ITV, paragraphs 5.55 and 5.74.

approach answering the question of ‘sufficiency’ or when a merger may be expected to operate against the public interest in this context.

- 6.42 We have considered the limited guidance available, including the explanatory notes to section 375 of CA03 and the DTI Guidance, as well as the CC’s report in BSkyB/ITV and the subsequent judgments of the CAT and the Court of Appeal in that case. We have also considered the debates in parliament at the time the media plurality consideration was enacted, and subsequent deliberations on the question of media plurality by the Leveson Inquiry, Ofcom, parliament, and the government.
- 6.43 The judgment of the Court of Appeal in BSkyB/ITV makes it clear that the assessment of plurality requires a qualitative assessment of the position likely to result from the Transaction.¹¹⁸ It is also clear from that judgment that we are required to consider whether following the Transaction the persons with control of media enterprises serving audiences in the UK, in terms of the number and also of the range and variety of those persons, satisfy the requirement of sufficient plurality.¹¹⁹
- 6.44 We note that in the present context the MFT already has material influence over Sky and Sky News. Accordingly, in assessing the question of ‘sufficiency of plurality’, we have taken into account the impact on plurality arising from the increased extent of the control the MFT will be able to exercise over Sky and Sky News following the Transaction, adopting an approach that considers:
- (a) the impact of the Transaction on the existing plurality of persons with control of media enterprises; and
 - (b) if there is a reduction in that plurality as a result of the Transaction, whether the plurality of persons with control of media enterprises will be sufficient following the Transaction.

Assessing the impact of the Transaction on media plurality

- 6.45 We have taken Ofcom’s media plurality measurement framework (the Ofcom measurement framework) as our starting point for assessing the impact of the Transaction on the level of plurality.¹²⁰ We have used this as a basis for

¹¹⁸ Court of Appeal, BSkyB/ITV, paragraph 118.

¹¹⁹ Court of Appeal, BSkyB/ITV, paragraphs 88 and 114.

¹²⁰ In September 2014, the Secretary of State for Culture, Media, and Sport asked Ofcom to carry out work on a set of indicators to inform a measurement framework for media plurality. Ofcom published its media plurality measurement framework for news and current affairs in November 2015.

assessing whether the Transaction might lead to harm from a reduction in plurality of persons with control of media enterprises.

Potential harm from the loss of media plurality

- 6.46 Ofcom identifies two related strands to the meaning of plurality:
- (a) ensuring that there is a diversity in the viewpoints that are available and consumed, across and within media enterprises; and
 - (b) preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.¹²¹
- 6.47 We consider that Ofcom's definition provides a helpful way of framing the potential harm to media plurality that might result from the Transaction and a basis for our assessment of the media plurality consideration.¹²²
- 6.48 The first potential effect is that the Transaction reduces the diversity of viewpoints available to and consumed by members of the public.
- 6.49 The specific concern in this case is the degree to which the Transaction might reduce the independence of Sky's news and current affairs content, and the extent to which this 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.
- 6.50 Concerns about a reduction in diversity might arise, in particular, if the increased control that the MFT will have over Sky following the Transaction means that the news and current affairs offerings operated by Sky and News Corp could 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 coordinated 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.
- 6.51 The second potential effect is that the Transaction could increase the influence of the MFT, and by proxy, the Murdoch family on public opinion and the political agenda.

¹²¹ Ofcom, November 2015, [Measurement framework for media plurality](#).

¹²² For background on the development of the Ofcom measurement framework see Appendix D.

- 6.52 The specific concern 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.
- 6.53 These two potential effects 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.
- 6.54 Using both of these theories of harm as a basis for framing our analysis, we have considered in the round whether the evidence obtained during our Inquiry indicates that the Transaction is likely to lead to a material reduction in the plurality of persons with control of media enterprises.

Ofcom measurement framework

- 6.55 Ofcom's measurement framework provides a starting point for developing our own framework for assessing the impact of the Transaction on plurality, and more specifically the theories of harm noted earlier.
- 6.56 The Ofcom measurement framework consists of three categories of quantitative metrics as well as qualitative contextual factors. Within the framework all forms of media including TV, print, radio, and online are considered.
- 6.57 The quantitative metrics in the Ofcom measurement framework are availability, consumption, and impact:
- (a) **availability**: measures the number of providers available at the point of consumption. Ofcom stated that an understanding of the number of sources that people could use is relevant to any assessment, but is insufficient in isolation as it does not recognise the levels of consumption or the ability to influence that each source will have.
 - (b) **consumption**: measures the number of people using news sources (referred to as 'reach'), the frequency with which these sources are used and the time spent using them. Ofcom noted that news consumption occurs across a range of media and, as such, consumption should be measured both using sector-specific measures (eg measures of consumption of TV use) and on a cross-media basis. For the latter Ofcom developed the bespoke 'share of reference' measure of cross-media consumption.

(c) **impact**: this metric helps inform how news content can influence the formation of people’s opinions. Ofcom noted that while quantifying impact is complex, proxies of impact (such as measures of importance and trust) should play a role in an assessment of plurality.

6.58 Ofcom made explicit in its framework that while helpful in assessing plurality, using a cross-media metric of consumption (such as its share of reference metric) has its limitations. It therefore considered that no one metric can be used in isolation and such measures should be used in combination to achieve the best quantitative assessment.¹²³ Ofcom also considered that ‘qualitative contextual factors’ are an integral part of its framework, stating that ‘there are aspects of the market that cannot be measured in a quantitative manner at all. These aspects relate to the differences between news sources and the organisations that produce them’.¹²⁴ Ofcom stated that such qualitative contextual factors are relevant as the operating environment can vary between news sources and news providers. For example, funding models can vary (for example, public funding and subscription models), the level of editorial control can vary (with, for example, certain proprietors having more or less control), or the level of regulation and oversight can vary (with broadcasters being subject to the Broadcasting Code and the BBC having its own regulatory processes and compliance).¹²⁵

6.59 The framework was subject to extensive public consultation by Ofcom before its publication in 2015.¹²⁶ This consultation was therefore carried out before the start of our Inquiry and allowed Ofcom to take account of a range of views before deciding on its approach.

6.60 In its responses to Ofcom’s consultation on its measurement framework, Fox noted that quantitative measures are not sufficient in measuring plurality, and as such, contextual factors also need to be considered.¹²⁷ Sky submitted that measures of availability are most relevant to an assessment of plurality.¹²⁸

6.61 In the course of our Inquiry we spoke to a range of third parties about the appropriate measurement framework to use in carrying out our assessment. A number of third parties noted that Ofcom had spent several years developing its thinking on its measurement framework.¹²⁹ Most third parties agreed that the Ofcom measurement framework was the only practical measurement

¹²³ [Ofcom measurement framework](#), paragraph 1.19.

¹²⁴ [Ofcom measurement framework](#), paragraph 1.20.

¹²⁵ [Ofcom measurement framework](#), paragraphs 3.15 to 3.19.

¹²⁶ [Ofcom measurement framework](#), paragraph 1.14.

¹²⁷ Fox, December 2014, [Response to Ofcom’s call for inputs on a measurement framework for media plurality](#).

¹²⁸ Sky, November 2014, [Response to Ofcom’s call for inputs on a media plurality measurement framework](#).

¹²⁹ For example, comments by [Matthew Horsman at the media plurality roundtable](#), page 11, line 2.

framework available for media plurality, noting that in considering availability, consumption, impact and contextual factors the framework captures most of the relevant factors.¹³⁰ However, third parties cautioned that there was judgement required in interpreting the Ofcom measurement framework and that it is not sufficient for our analysis,¹³¹ that there are difficulties in trying to combine consumption metrics,¹³² and that qualitative concerns are an important consideration.¹³³

6.62 Given the work conducted by Ofcom relating to its measurement framework and comments from third parties during our Inquiry, we consider that the Ofcom measurement framework provides an appropriate starting point for developing our own framework for our assessment of the media plurality consideration, particularly in terms of our approach to assessing quantitative evidence relating to availability and consumption. We agree with Ofcom that there are aspects of the market that cannot be measured in a quantitative manner, and note that what it describes as ‘qualitative contextual factors’ are integral to any overall assessment.

6.63 In particular, we consider that a distinction should be drawn between (i) contextual factors that provide background to inform the availability, consumption and impact metrics, and (ii) qualitative evidence, being evidence that is relevant to our assessment and is not easily quantifiable. Both are important, and our view is that taking into account a range of relevant qualitative evidence forms a key part of our assessment of the media plurality consideration, particularly in terms of the aspects of plurality that are inherently difficult to measure, such as the impact and influence of particular media providers on public opinion and the political agenda.

Assessing whether media plurality remains sufficient

6.64 We are also required to consider whether, if there is a material reduction in media plurality arising as a result of the Transaction, the plurality of persons with control of media enterprises nonetheless remains sufficient.

Consideration of when media plurality may be considered insufficient

6.65 There is very limited guidance or consensus regarding what constitutes a sufficient plurality of persons with control of media enterprises. The lack of consensus has been reflected in the submissions we have received during the

¹³⁰ For example, comments by [David Levy at the media plurality roundtable](#), page 9, line 13.

¹³¹ For example, comments by [Alice Enders at the media plurality roundtable](#), page 13, line 6.

¹³² For example, comments by [David Elstein at the media plurality roundtable](#), page 8, line 24.

¹³³ For example, comments by [David Levy at the media plurality roundtable](#), page 10, line 17.

course of our Inquiry to date and in the views expressed during the expert roundtable on media plurality.¹³⁴ Ofcom's view at the time that it developed its measurement framework was that ultimately this question is a matter to be determined by government and parliament.¹³⁵

- 6.66 We have reviewed the available guidance and a range of other sources, including statements made that the media plurality consideration:
- (a) is concerned primarily with ensuring that ownership of media enterprises is not over-concentrated in the hands of a limited number of persons;¹³⁶
 - (b) is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality;¹³⁷ and
 - (c) in requiring there to be a sufficient plurality of persons with control of media enterprises, the criterion of sufficiency, for this purpose, seems to be the need to avoid over-concentration of the market.¹³⁸
- 6.67 The Parties have submitted that the DTI Guidance indicates that the threshold for identifying plurality concerns is a high one and that whether the Transaction will result in an unacceptable level of media and cross-media dominance is the test that should be applied when considering the statutory question that we must answer, ie whether the Transaction will result in insufficient plurality.
- 6.68 We agree that, because the purpose of the media plurality consideration is to ensure that the control of media enterprises is not over-concentrated in the hands of a limited number of persons, it is therefore intended to prevent media and cross-media dominance and ensure a minimum level of plurality. However, we disagree with the Parties' characterisation of the DTI Guidance as indicating that the threshold for identifying plurality concerns is a 'high one'.
- 6.69 Our view is that, in the context of assessing whether the plurality of persons is sufficient, it is important to not read into the terms such as 'over-concentration' and 'dominance' used in the DTI Guidance, the understanding or interpretation that would be applied when measuring competition in a market in order to identify a substantial lessening of competition. This is because the media plurality consideration was introduced into the statutory framework for UK merger control on the basis that statutory protection regarding competition may not be sufficient to safeguard the level of plurality that is considered

¹³⁴ [Ofcom measurement framework](#), paragraph 2.9.

¹³⁵ [Ofcom measurement framework](#), paragraph 2.9.

¹³⁶ [Explanatory notes to section 375 of CA03](#).

¹³⁷ [DTI Guidance](#), paragraph 7.7.

¹³⁸ Court of Appeal, [BSkyB/ITV](#), paragraph 88.

necessary.¹³⁹ It follows from this that parliament attached considerable importance to the preservation of plurality of media controllers and it is in that context that the purpose of the media plurality consideration should be viewed.

- 6.70 We therefore 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. This view is based on our review of the evidence we have obtained and, particularly, the fact that parliament was clearly mindful of the importance and sensitivity of ensuring a sufficient level of plurality in order to support a healthy and informed democratic society when it included specific statutory provisions over and above existing competition law to safeguard plurality.
- 6.71 In that regard, we note that Lord Justice Leveson stated in the Leveson Inquiry – based on his hearing of evidence relating to plurality and media ownership – that the importance of plurality of news and current affairs provision is a qualitatively different issue to those arising from general competition concerns.¹⁴⁰ Lord Justice Leveson therefore recommended that the levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns.¹⁴¹ We agree with the view that Lord Justice Leveson expressed in making this recommendation.
- 6.72 The Parties have objected to the weight placed, by us, on the statements and recommendations made by Lord Justice Leveson. They submit that the remit of the Leveson Inquiry was to address the different question of the culture, practice and ethics of the press, rather than a detailed review of plurality and media ownership issues and, as acknowledged by Lord Justice Leveson himself, that he was neither qualified or required to give a view on what level of plurality would give rise to concerns.¹⁴²
- 6.73 We agree that the remit of the Leveson Inquiry was broad and that it arose from concerns regarding the press. Nonetheless, the terms of reference for the Leveson Inquiry specifically required it to look into the relationships between the press and politicians, and it took account of a comprehensive range of evidence from politicians, officials, journalists and media owners (including Rupert and James Murdoch) in reaching its conclusions in this

¹³⁹ See, for example, Lord McIntosh's speech during the passage of the Communications Bill in 2003, [Hansard \(HL Debates\)](#), 2 July 2003, Cols 912 to 913. See also Appendix D, paragraph 9.

¹⁴⁰ [Leveson Report](#), Volume 3, Chapter I, paragraph 4.19 (page 1,470).

¹⁴¹ [Leveson Report](#), Volume 3, Chapter I, paragraph 4.19, page 1,470.

¹⁴² See [Leveson Report](#), Volume 3, Chapter I, paragraphs 1.1, page 1,461 and paragraph 4.19, page 1,470.

regard. We also consider it relevant that Lord Justice Leveson was specifically required to make recommendations for a more effective regulatory regime which supported, among other things, the plurality of the media and how future concerns about cross-media ownership should be dealt with.¹⁴³ Furthermore, in response to the Parties' point about Lord Justice Leveson's acknowledgement of his lack of qualification in relation to plurality, we note that he made this comment in relation to giving a view on the specific levels of the various metrics that he considered it would be sensible for Ofcom to identify through consultation, not to suggest that he was not qualified to conclude that plurality concerns would be observed at lower levels of concentrations than competition concerns.¹⁴⁴

Consideration of the relevance of a historic benchmark

- 6.74 The Parties submitted that our assessment of what constitutes 'sufficient plurality' should be set by reference to a historic benchmark when plurality may be deemed to have been sufficient, such as in 2003 when the Communications Act was enacted. In particular, Fox suggested that it is implausible that parliament considered media plurality to be insufficient when passing legislation that relaxed controls on media ownership and, particularly, cross-media ownership.¹⁴⁵ Third party submissions, including those from the Rt. Hon Ed Miliband, the Rt. Hon Kenneth Clarke, Sir Vince Cable and Lord Falconer (Ed Miliband et al) and Avaaz, did not support such an approach, outlining that there have been significant changes in the market since that time, making comparisons between 2003 and the present difficult, and that it was equally plausible that at least some MPs may have voted for the enactment of the Communications Act even if they did not consider plurality to be sufficient at that time.¹⁴⁶
- 6.75 Sky submitted that an approach that presumes that the cross-media ownership of TV and newspaper assets per se raises concerns is incorrect, as the simple addition of TV news to newspapers has no bearing on whether the Transaction will result in 'unacceptable levels of media and cross-media dominance'. As explained previously, we do not consider that the reference to 'unacceptable levels of media and cross-media dominance' in the DTI Guidance should be equated with the concept of dominance in a competition context, and that plurality concerns may arise at a lower level of concentration. However, we agree that the combination of TV and newspaper assets does not in and of itself necessarily mean there is a plurality concern.

¹⁴³ [Leveson Inquiry, Terms of Reference](#).

¹⁴⁴ [Leveson Report](#), Volume 3, Chapter 1, paragraph 4.19, page 1,470.

¹⁴⁵ Fox, [initial submission](#), paragraph 3.14.

¹⁴⁶ [Hearing with politicians on 1 November 2017](#).

As set out previously, any assessment carried out in relation to the media plurality consideration is on a case by case basis, meaning that we are focused on assessing whether any concerns may arise in relation to the control exercised and exercisable over the specific TV and newspaper assets relevant to the Transaction. We cannot therefore draw any lessons for this Inquiry, as Sky submits we should, from the fact that there was no public interest intervention made in relation to Northern and Shell's acquisition of Channel 5 in 2010. That was a matter for the Secretary of State to intervene in at the relevant time by reference to the particular facts of that merger.¹⁴⁷

6.76 We note that in advice given by Ofcom to the Secretary of State in 2012 regarding media plurality, Ofcom stated that:

it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and unpredictable. What is considered sufficient or not will vary with time and needs to be considered in reference to the broad market and political context of the times. Notions of sufficiency today are likely to be somewhat different from those of ten years ago, or ten years hence.¹⁴⁸

6.77 We agree with Ofcom on this point. We therefore consider that it is not appropriate to undertake our assessment of the media plurality consideration against a particular historic benchmark on the basis that this assessment needs to be undertaken by reference to the current market and political context, particularly given the developments in media and communications over recent years.

Our approach to assessing sufficiency

6.78 In the light of the earlier considerations, we consider that it is appropriate to take an approach to the assessment of the media plurality consideration that takes into account a range of evidence – both quantitative and qualitative – and considers that evidence in the round in order to inform our view on whether the plurality of persons with control of media enterprises is likely to be sufficient post Transaction, having regard to any change in plurality that arises as a result of the Transaction. While there is a lack of consensus about precisely what level of plurality of persons should be considered insufficient, we consider that any such level is likely to be lower than equivalent measures

¹⁴⁷ We note that Northern and Shell has since sold Channel 5 to Viacom in 2014.

¹⁴⁸ Ofcom, June 2012, *Measuring media plurality, advice to the Secretary of State for Culture, Olympics, Media and Sport*, paragraph 5.118. See also Appendix D, paragraph 31.

of dominance or concentration that may be used in the context of a competition assessment.

6.79 In carrying out our assessment, we have taken account of two key factors, having considered the range of qualitative and quantitative evidence in the round:

(a) 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 the 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 over which the MFT has control; and the strength of the MFT's influence over public opinion and the political agenda.

(b) 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.

6.80 We note that Ofcom's measurement framework provides a basis for assessing both these elements, because it allows us to compare the position of the MFT following the Transaction with that of other media enterprises (and persons with control of those other media enterprises). In our analysis we set out the measures of availability, consumption and impact for Sky and News Corp and compare these with equivalent metrics for other media enterprises serving the relevant audience, while also taking account of relevant qualitative evidence.

Structure of our assessment under the framework

6.81 In chapters 7 and 8, we set out our provisional conclusions regarding the extent of control exercised and exercisable by the MFT over Fox, Sky/Sky News and News Corp and the change brought about by the Transaction, taking into account internal plurality. After considering the UK news landscape in chapter 9 we set out our assessment of the impact of the Transaction, using the framework of the two theories of harm described previously and outlining the position of the Parties and News Corp pre and post Transaction and how this compares with other media enterprises serving the relevant audience (chapters 10 and 11). We then set out our assessment of whether there is likely to be sufficient plurality of persons with control of media enterprises serving the relevant audience (chapter 12) in the concluding

chapter on the media plurality consideration, applying the framework set out earlier and having taken into account all the evidence in the round.¹⁴⁹

7. Assessment of the MFT's control over Fox, Sky and News Corp

7.1 For the reasons given in paragraph 6.21 and in accordance with the approach set out in paragraph 6.26 onwards we set out in this chapter our provisional assessment of:

- (a) the actual extent of control exercised and exercisable by the MFT over each of Fox and News Corp, noting that the extent of this control is not affected by the Transaction; and
- (b) the actual extent of control exercised and exercisable by the MFT over Sky and Sky News before the Transaction and the impact of the Transaction on the extent of this control.

7.2 We preface this by setting out how we treat the MFT and its relationship with Rupert, Lachlan and James Murdoch for the purpose of our assessment. This relies on our provisional understanding of that relationship.

How we treat the MFT

7.3 As described above, the MFT acts through its sole trustee, Cruden Financial Services LLC (Cruden). The affairs of the MFT are controlled by Cruden, which is, in turn, controlled by the votes of its six directors. [REDACTED] of the directors are appointed by [REDACTED]. [REDACTED] of the directors [REDACTED]. Each director must act in the best interests of Cruden and, consistent with the discharge of Nevada state law, owes common law fiduciary duties of care and loyalty to that company. It is notable that, as the sole trustee of the MFT, Cruden owes a fiduciary duty to the MFT and its beneficiaries, who are principally Rupert Murdoch's six children. As stated above, Rupert Murdoch and four of his children have appointed directors of Cruden. It follows that the reference to the duties of Cruden's directors is made in the context that Cruden must at all times act in

¹⁴⁹ We note here that we received submissions from Lord Putnam raising concerns regarding the potential misuse of data relating to Sky's subscriber base in order to increase political influence. We also note that the [Secretary of State's letter to the Parties dated 20 September 2017](#) referred to the fact that we may wish to consider whether this could be relevant to our plurality assessment. We have considered this point and have concluded that while relevant to a competition assessment (which the European Commission has carried out) we do not consider that it is directly relevant to the media plurality consideration (or broadcasting standards consideration). We also note that, in any event, personal data held by Sky about its customers must be processed in accordance with the Data Protection Act 1998 and that the Information Commissioner has powers to take enforcement action against data controllers that breach that legislation.

the best interests of the MFT, which, in practical terms, means acting in the best interests of the MFT's beneficiaries.

7.4 [REDACTED].

7.5 We consider there are sufficient grounds for us to find provisionally that the MFT and Rupert, Lachlan and James Murdoch are likely to act together, and in each other's interests, in exercising control for the purpose of our assessment. This provisional finding is based on the close association between Rupert, Lachlan and James Murdoch as family members; their close association with the MFT as described earlier; [REDACTED]; the fact that (as set out in more detail later) it is customary for the MFT to vote in accordance with the recommendations of the boards of Fox and News Corp; and the close association of these members of the Murdoch family with, and role in establishing certain parts of, the Fox, Sky and News Corp businesses.

7.6 We note that under the Takeover Code, members of the Murdoch family and the MFT would be presumed to be persons 'acting in concert'. The Takeover Code sets out nine examples of persons who will be presumed to be persons acting in concert unless the contrary is established.¹⁵⁰ Two of the definitions of persons presumed to be acting in concert in the Takeover Code apply to the relationship between the MFT and Rupert, Lachlan and James Murdoch:

(a) a person, the person's close relatives, and the related trusts of any of them, all with each other; and

(b) the close relatives of a founder of a company to which the Takeover Code applies, their close relatives, and the related trusts of any of them, all with each other.

7.7 In our view, these provisions of the Takeover Code reflect an assumption that persons falling within the above mentioned categories are likely to act together. This is consistent with our assessment of how Rupert, Lachlan, James Murdoch and the MFT are likely to act for present purposes. We have also considered section 127 of the Act, which defines associated persons. In particular, section 127(4) sets out who should be regarded as associated with one another such that they may be treated as one person for, among other things, the purpose of section 58(2C) of the Act. This includes:

(a) any individual and that individual's relatives (which includes brothers, lineal ancestors and descendants);¹⁵¹ and

¹⁵⁰ [Takeover Code](#), page 48.

¹⁵¹ Section 127(4)(a) and Section 127(6) of the Act.

(b) any person in their capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor.¹⁵²

7.8 We have not had sight of the trust agreement of MFT, but we understand from Cruden's response to our information request that the MFT was established by a declaration of trust by Cruden,¹⁵³ as a successor to a trust formed under Australian law in 1970 for the benefit of Rupert Murdoch's family and charities, originally settled by Albert Edward Harris for the purpose of securing the future financial stability of the Murdoch family. We therefore note that the deeming effect of section 127 of the Act is not applicable. As a result, we base our approach on an assessment of the practical reality of the position.

7.9 Therefore, on the basis of our provisional finding in paragraph 7.5 our view is that we should consider that the MFT and Rupert, Lachlan and James Murdoch 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. For convenience, references to control being exercised and exercisable by the MFT should therefore be considered to include control exercised by any or all of Rupert, Lachlan and James Murdoch, unless otherwise indicated.

The MFT's control over Fox

7.10 The MFT exerts control over Fox through the following:

- (a) the MFT and Rupert Murdoch's shareholdings; and
- (b) the Murdoch family's roles on the Fox board (James Murdoch as CEO and Rupert Murdoch and Lachlan Murdoch as co-executive chairmen)

7.11 Given the Murdoch family's close association with the MFT, we have considered whether it would underestimate the actual extent of the MFT's control over Fox to assume that relationship as being equivalent to that of an institutional investor. In our assessment of the MFT's control over Fox, as with News Corp and Sky, we have therefore considered the extent to which additional control is and can be exercised as a result of the historic relationship between the MFT and each of Fox, Sky and News Corp. This assessment is consistent with the view put to us by one of Fox's independent directors that the MFT controlled companies are 'family companies' (in the sense that the largest shareholder is linked to a single family).¹⁵⁴

¹⁵² Section 127(4)(b) of the Act.

¹⁵³ This is pursuant to Cruden's authority as trustee of the AE Harris Trust.

¹⁵⁴ Summary of hearing with [Jacques Nasser, Fox independent director](#), page 1.

The MFT's and Rupert Murdoch's shareholding

- 7.12 Fox has two classes of common stock that are authorised and outstanding: non-voting Class A Common Stock and voting Class B Common Stock.¹⁵⁵ With a shareholding of 38.4% of the voting Class B Common Stock, the MFT is by a considerable margin the largest shareholder in Fox.¹⁵⁶ As at 18 September 2017, Rupert Murdoch owned less than 1% of voting Class B Common Stock, and less than 1% of the non-voting Class A Common Stock. The MFT's and Rupert Murdoch's combined voting share of Fox stock is 38.9%. As the MFT owns 38.4% of the Class B voting shares and less than 1% of the Class A non-voting shares, its overall economic interest in Fox is 16.6%.
- 7.13 The MFT was not on the losing side of a vote in any of the five Fox annual general meetings (AGMs) held between 2013 to 2017. However, there were four instances where the MFT's vote was decisive,¹⁵⁷ ie removing the MFT's vote would have resulted in a different outcome. These motions were:
- (a) in 2013, a motion for the chairman of Fox to be an independent director (the MFT voted against this);
 - (b) in 2013, a motion to appoint Lachlan Murdoch as a director of Fox (the MFT voted in favour of this);
 - (c) in 2016, a non-binding advisory resolution on of executive compensation (the MFT voted in favour of this);
 - (d) in 2017, to end the dual class share structure which, as the motion is reported to have argued, left some shareholders with disproportionate voting power and others with none at all¹⁵⁸ (the MFT voted against this).
- 7.14 The shareholding of the MFT has therefore been sufficient to prevent an independent director being put forward for the board chair and enabled the reappointment of Lachlan Murdoch in 2013, (although Lachlan Murdoch was subsequently re-elected as director with the support of a majority of non-MFT shareholders at each AGM from 2014 onwards). The MFT's shareholding (alongside Rupert Murdoch's) therefore gives it material influence over key decisions relating to Fox, most notably defeating the 2013 vote for an

¹⁵⁵ Fox, *Form 10-K for the financial year ending 30 June 2017, Note 12*.

¹⁵⁶ The only other shareholder above 5% is Volpe Velux, L.P. (part of the ValueAct Capital group) with approximately 6.7% of the voting Class B Common Stock in Fox.

¹⁵⁷ In relation to the fourth instance this was identified from [news reports](#). See Reuters, November 2017, [Narrow win for Fox shows restlessness with dual-class shares](#).

¹⁵⁸ See Roxana Tynam quoted in Reuters, November 2017, [Narrow win for Fox shows restlessness with dual-class shares](#).

independent chairman, enabling Rupert and Lachlan Murdoch to take up that position.

The roles on the Fox board and executive positions of members of the Murdoch family

- 7.15 We have described, from paragraph 2.21, how the MFT is structured; the ability Rupert, Lachlan and James Murdoch have to appoint [X] the directors of Cruden as trustee of the MFT;¹⁵⁹ [X];¹⁶⁰ and Lachlan and James Murdoch's position as two of six principal beneficiaries of the MFT. In addition, we have provisionally found that the MFT (alongside Rupert Murdoch) holds sufficient shares in Fox to be able to exercise material influence over key decisions.¹⁶¹ In this section, we look at the roles that Rupert, Lachlan and James Murdoch have in Fox both on the board and as executives. We also set out further links between Fox and the MFT through other Fox directors.
- 7.16 As CEO of Fox, James Murdoch has the formal responsibility for the culture and day to day management of Fox. He is responsible for leading the development and execution of Fox's long term strategy with a view to creating shareholder value and acts as a direct liaison between the board and management of Fox. He also has direct powers to appoint or oversee the appointment of Fox's senior management.
- 7.17 As executive chairmen on the Fox board, Rupert and Lachlan Murdoch will have a very considerable degree of influence on the strategy and overall direction of Fox. In relation to Fox News this is enhanced by Rupert Murdoch's role as acting CEO, following Roger Ailes' departure in July 2016.
- 7.18 The Murdoch family's influence on the Fox board is further enhanced by the presence of David DeVoe, a director of, and a senior adviser to the Fox board who is also a director of Cruden, the trustee of the MFT.¹⁶²
- 7.19 The Fox board currently has 13 directors, eight of which are independent. Of the eight independent directors on the Fox board, three have served for a significant period of time or appear to have close relationships with the Murdoch family or companies that they control. The three directors are:
- Jacques Nasser was made an independent director of Sky in November 2002 and worked with Rupert Murdoch since then and James Murdoch

¹⁵⁹ Alongside Elisabeth Murdoch and Prudence MacLeod.

¹⁶⁰ See paragraph 7.4.

¹⁶¹ See paragraph 7.14.

¹⁶² Fox board of directors, [director biographies](#).

since 2003. Mr Nasser held this position for ten years prior to his appointment on the Fox board in 2013;¹⁶³

- Sir Roderick I. Eddington has been a director at Fox for 18 years having joined the board in 1999;¹⁶⁴
- Viet Dinh has been a director of Fox for 13 years having joined the board in 2004 and is a godparent to Lachlan Murdoch's second child. Mr Dinh told us that over the years he and Lachlan Murdoch had become friends.^{165,166}

7.20 Further, Chase Carey, Vice Chairman of the board and a consultant to Fox since July 2016 has a longstanding relationship with Fox and the Murdoch family, previously acting as the Chief Operating Officer at Fox, Deputy Chairman from 2009 to 2015, having previously been a director from 1996 to 2007. He is also a director on the Sky board.¹⁶⁷

7.21 The Fox board and the Sky board contrast in terms of the length of tenure and relationships to members of the Murdoch family of certain of the independent directors.¹⁶⁸ As set out above, four independent directors of Fox have served for more than nine years and/or have close relationships with members of the Murdoch family. Our provisional view is that these directors have relationships that could be perceived to make them more inclined to vote in line with the MFT in circumstances where doing so would not conflict with their fiduciary duties, and therefore gives the MFT additional informal control over Fox. This can be contrasted with the Sky board, where the independent directors have not served alongside the Murdoch family for so long and have not had previous relationships with members of the Murdoch family or the companies they control.¹⁶⁹

¹⁶³ Fox board of directors, [director biographies](#).

¹⁶⁴ Fox board of directors, [director biographies](#).

¹⁶⁵ Fox board of directors, [director biographies](#).

¹⁶⁶ The independence of Jeffrey Ubben as the CEO and Chief Investment Officer of the ValueAct Capital group may also be subject to doubt under the UK Corporate Governance Code. Value Act Capital is the second largest shareholder in Fox with approximately 6.7% of the voting Class B Common Stock. This does not, however, relate to his independence from the MFT.

¹⁶⁷ Fox board of directors, [director biographies](#).

¹⁶⁸ We note that under B.1.1 the UK Corporate Governance Code the board should, in considering the independence of a director, take into account relevant factors that include (among others) a director's material business relationships with the company in the last three years and whether the director has served on the board for more than nine years. The UK Corporate Governance Code does, however, permit a company's board to determine that a director is independent notwithstanding the existence of such relationships or circumstances, under the principle of comply or explain.

¹⁶⁹ There is no suggestion that these directors do not meet the legal standard required for an independent director under the NASDAQ rules or Delaware State law.

7.22 In coming to the above provisional view, we recognise that the independence of Fox's directors is governed by Delaware law and we do not question their compliance with their fiduciary duties.

Conclusion on the MFT's control over Fox

7.23 In terms of the extent of control currently exercised and exercisable by the MFT over Fox, 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 co-executive chairmen. We also provisionally consider that the MFT's control over Fox is further enhanced by informal means through relationships between certain directors of Fox and either the MFT or members of the Murdoch family (or both).

The MFT's control over News Corp

7.24 The MFT exerts formal control over News Corp through the following:

- (a) the MFT and Rupert Murdoch's shareholdings; and
- (b) the Murdoch family's roles on the News Corp board, with Rupert and Lachlan Murdoch as co-executive chairmen and James Murdoch as a director.

7.25 For the reasons noted in paragraph 7.11 , we have considered whether the MFT may be able to exert additional informal control over News Corp, and specifically News UK newspapers, through Rupert Murdoch, as a consequence of his close association and long history with them.

The MFT's shareholding

7.26 We looked at the voting history of the MFT since 2007. Over this period the MFT has consistently voted with the recommendation of the boards of Fox and News Corp. The MFT has not been on the losing side of a shareholder vote over this time period. As of 7 August 2017 Rupert Murdoch additionally owned approximately 1% of the company's Class B Common Stock and less than 1% of the company's Class A Common Stock.

7.27 At each AGM between 2014 and 2016, the majority of non-MFT shareholders in News Corp have voted for the elimination of dual capital structure. For each of these three years, the advisory and non-binding proposal did not pass.

7.28 At the 2014 AGM along with a number of other directors none of the members of the Murdoch family received the backing of a majority of non-MFT shareholders. The MFT's vote was therefore required to ensure their positions on the board.

The Murdoch family's roles on the News Corp board

7.29 The position of all three members of the Murdoch family on the News Corp board, and particularly Rupert and Lachlan Murdoch's role as co-executive chairmen, gives them formal duties for the oversight of News Corp, which includes News UK.

7.30 In addition to members of the Murdoch family's positions on the board, Robert Thomson, the News Corp CEO since 2013, has had a longstanding relationship with enterprises controlled by Rupert Murdoch. He has held several positions within News Corp over many years, having been a former editor of The Times (of London), The Times (US), editor-in-chief of Dow Jones & Company, and managing editor of The Wall Street Journal.¹⁷⁰

Exercise of informal control over newspapers owned by News UK

7.31 Rupert Murdoch's history of influence at the newspapers owned by News UK is well documented. For example, Lord Justice Leveson described the 'extraordinary influence that Rupert Murdoch has exercised over the development of the press in Britain, since he purchased The News of the World newspaper in 1969'.¹⁷¹

7.32 In the subsequent sections we outline how the history of Rupert Murdoch's involvement with News UK's newspapers and his position on the News Corp board continues to allow the MFT, and Rupert Murdoch in particular, to have significant influence over News UK.

Rupert Murdoch's current influence over News UK titles

7.33 Rebekah Brooks (CEO of News UK) told us that she considers that editorial policy at News UK papers is set by their editors. This was confirmed by the editors themselves. Each of them told us that they have editorial independence and Rupert Murdoch's occasional discussions with them do not affect this.¹⁷²

¹⁷⁰ [News Corp website, *Our Leadership*](#).

¹⁷¹ [Leveson Report](#), Part C, Chapter 2, paragraph 1.1

¹⁷² See [summaries of hearings with News Corp, The Times, and The Sun](#).

- 7.34 Notwithstanding this view, News Corp told us that as Executive Chairman of News Corp, Rupert Murdoch interacts on a regular basis with Mrs Brooks.¹⁷³
- 7.35 Lachlan Murdoch, Co-Chairman of News Corp, communicates with senior management of News UK on corporate and commercial matters at the main meeting each year where the News UK budget is presented.
- 7.36 [REDACTED].
- 7.37 In addition to his interactions with Mrs Brooks, Rupert Murdoch regularly expresses his views on a variety of issues with the editors of News UK newspapers. News Corp told us that Rupert Murdoch is in occasional contact with:¹⁷⁴
- the Editor-in-Chief of The Sun;
 - the Editor of The Sun on Sunday although less frequently;
 - the Editor of The Times; and
 - the Editor of The Sunday Times, although again less frequently.
- 7.38 News Corp told us that these occasional communications which Rupert Murdoch had with the editors of The Sun and The Times (notwithstanding 1981 Times Undertakings discussed in further detail later)¹⁷⁵ may, among other things, include comment on what stories had appeared in UK newspapers that day (News UK titles and competitors) and commentary on world and UK affairs. They also include Rupert Murdoch asking the editors for insights on current events.
- 7.39 Rupert Murdoch's interest in newspapers he has controlled over a long period of time and his longstanding relationships with senior personnel like Mrs Brooks have supported and enabled Rupert Murdoch in retaining significant links to News UK.
- 7.40 In our provisional view, the combination of Rupert Murdoch being able to express his views to both the editors of the UK newspapers and the News UK CEO enhance his influence in relation to editorial matters. This influence is only possible due to the acceptance and expectation that Rupert Murdoch will

¹⁷³ See [summary of hearing with News Corp](#).

¹⁷⁴ See [summaries of hearings with News Corp, The Times, and The Sun](#).

¹⁷⁵ See [summary of hearing with The Times](#), page 4: 'JW stated that he has contact with Rupert Murdoch (RM) at times. JW explained that RM asks him about the broad political picture in the UK. JW stated that RM does not make comments to him on editorial views, the running order of news or choice of stories. RM may occasionally comment to him that a particular day's newspaper was good.'

regularly want to be kept up to date on matters, through informal verbal updates.

7.41 Rupert Murdoch's involvement in News UK goes beyond telephone calls. In contrast to Sky where there is no indication of any member of the Murdoch family being involved in the hiring of editorial staff at Sky News (beyond their formal role), we have direct evidence of Rupert Murdoch's recent involvement in the hiring of News UK editors. For example, Mrs Brooks told us that prior to Tony Gallagher's appointment to The Sun, herself, Mr Thomson and Rupert Murdoch had had informal chats with Mr. Gallagher.¹⁷⁶ Mrs Brooks went on to explain that [REDACTED].

7.42 Turning to those who worked at News Corp owned papers in the past, Andrew Neil (editor of The Sunday Times from 1983 to 1994) told us that Rupert Murdoch regarded himself as editor-in-chief of the tabloid papers but that his influence was subtle:

[Rupert Murdoch] would always let know what he thought as opposed to what you should do but you always got the impression that, if you steered away too much from what he thought, then your leasehold on the newspaper may not be for a long while.¹⁷⁷

Effect of the 1981 Times Undertakings on Rupert Murdoch's influence

7.43 We set out in chapter 2 (see from paragraph 2.34) a description of the 1981 Times Undertakings which were concerned with protecting the editorial quality and integrity of The Times, The Sunday Times and The Times Supplements. Questions about the effectiveness of these undertakings were raised as early as 1982 (the year following their adoption) by the then editor of The Times.¹⁷⁸ However, Rupert Murdoch gave evidence to the Leveson Inquiry that on editorial matters he observed the limitations imposed by the 1981 Times Undertakings.¹⁷⁹

7.44 More recently, Mr Neil told us, in relation to the 1981 Times Undertakings:

¹⁷⁶ See [summary of hearing with News Corp](#).

¹⁷⁷ Transcript of hearing with Andrew Neil, page 11, line 4.

¹⁷⁸ Harold Evans who served as Editor of The Times when it was first acquired by Rupert Murdoch told the Leveson Inquiry that he recalled being sent 'a stream of memos asking [him] to downplay or suppress news that was bad for the government'. In a letter to the Independent National Directors in February 1982, one month before conflict with Rupert Murdoch led him to resign, Harold Evans stated that Rupert Murdoch attempted repeatedly to circumvent his authority as Editor in order to change the editorial stance of the paper. In evidence given to the Leveson Inquiry, Rupert Murdoch indicated that he himself concluded that Harold Evans should no longer serve as Editor of The Times and had to be let go making Harold Evans 'the only editor of the Times we have ever asked to leave'.

¹⁷⁹ Evidence provided to the Leveson Inquiry.

In terms of public presentation, [Rupert Murdoch] always felt constrained; in reality, he has never felt constrained by that. It was a typical British establishment figment to put around the arrangement. He arranged a similar one for the Wall Street Journal when he took over that. These can be put in place by regulators to allow things to happen. They do not last for too long. I was quite grateful, actually, that he did not often listen to them, because there were several times when the independent directors tried to fire me and he actually stopped the directors from doing that. So, it worked both ways. These things may suit regulators like yourselves. They may suit politicians who want to get things done. At the time, they thought I think wrongly, historically that The Times and The Sunday Times would go bust if he did not get them. In reality, they have had very little constraint on how he has operated.¹⁸⁰

- 7.45 John Witherow, Editor of The Times, acknowledged the criticism of the efficacy of the 1981 Times Undertakings but rejected it:

I know [the 1981 Times Undertakings] are dismissed but they [work], [there] are effectively independent directors, who I meet every six months to discuss whether the undertakings have been breached in any way so that there is a formal process that goes on and I think they work very effectively.

- 7.46 Similarly, Mrs Brooks, told us:

There is an absolute respect for the undertakings, and I do not know any editor of The Times or The Sunday Times, or any independent director for that matter, where Rupert Murdoch has shown any disrespect for those undertakings.

- 7.47 However, in 2012, James Harding resigned as Editor of The Times and, following his resignation, said, 'It has been made clear to me that News Corporation would like to appoint a new Editor of The Times. I have, therefore, agreed to stand down.'¹⁸¹

- 7.48 Our provisional view is that there are questions about the efficacy of the 1981 Times Undertakings in constraining the informal influence of Rupert Murdoch in relation to The Times and The Sunday Times. Overall, the evidence suggests that Rupert Murdoch continues to have significant engagement and

¹⁸⁰ [Transcript of hearing with Andrew Neil](#), page 11, lines 17 to 25 and page 12, lines 1 to 7.

¹⁸¹ [Full text of James Harding resignation speech](#).

a consistent record of significant influence over News UK newspapers, including The Times and The Sunday Times, beyond his formal role as News Corp Co-Executive Chairman through contacts with editors, the CEO of News UK and his involvement in the hiring of editors.

Conclusion on the MFT's control over News Corp

- 7.49 In terms of the extent of control currently exercised and exercisable by the MFT over News Corp, we have provisionally found that 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 co-executive chairmen, with James Murdoch as another director, and Robert Thomson (a long time close associate of Rupert Murdoch) as CEO. As with Fox, we note that the MFT is by a considerable margin the largest shareholder in News Corp and has not lost a shareholders' vote at a News Corp AGM.
- 7.50 In addition to this significant degree of formal control, 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. This influence is expressed through repeated conversations over several years with each of the News UK owned newspapers' editors and conversations with Rebekah Brooks, the CEO of News UK and former editor of The Sun and News of the World. These channels of influence are particularly evident in relation to The Sun and The Sun on Sunday. The Times and The Sunday Times are to some extent protected by the undertakings given in 1981 as to their editorial independence, although for the reasons set out previously we place limited weight on their effectiveness at constraining the informal influence of the MFT.

The MFT's control over Sky pre Transaction

- 7.51 In this section, we set out how the MFT currently exercises control over Sky and Sky News indirectly through its shareholding in Fox and James Murdoch's role as Chairman of the Sky board. In each instance we consider constraints to that control. We then take account of other ways in which the MFT may, informally, exercise control over Sky and Sky News currently. Finally, we consider whether, even in the absence of the Transaction, the MFT would be able to exercise significantly more control over Sky and Sky News than the actual extent of control that it currently exercises. This provides the basis on which we form a provisional view of the actual extent of control that is currently exercisable by the MFT over Sky and Sky News.

Fox's shareholding in Sky

- 7.52 The MFT primarily exercises formal control over Sky through its control over Fox. As discussed earlier, this is principally, but not solely, through the MFT and Rupert Murdoch's combined 38.9% shareholding in Fox. Fox holds approximately 39.14% of the issued share capital of Sky. A voting agreement in September 2005 between Fox, Sky and affiliated entities, means that Fox's voting at general meetings of Sky is capped at 37.19%.¹⁸² A vote share of 37.19% gives Fox significant voting power at Sky. For example, Fox has sufficient voting rights to block a special resolution.
- 7.53 We looked at the voting results of Sky's AGMs since 2012 and note that [REDACTED]. However, Fox's shareholding has been decisive against the majority of non-Fox shareholders on occasion.¹⁸³ This includes in 2016 where the majority of non-Fox shareholders who cast a vote, voted against James Murdoch's appointment as Chairman of Sky. [REDACTED] the motion was passed with 71.55% in favour of the motion.¹⁸⁴
- 7.54 [REDACTED].

Constraint by other Sky shareholders on the MFT's ability to exercise control over Sky through Fox

- 7.55 Currently, around 60% of Sky is not owned by Fox. [REDACTED], but if a resolution was put to a shareholder vote that was not in the interests of the non-Fox shareholders these shareholders, acting together, could block it.
- 7.56 However, there are a number of key issues which would not typically be put to a shareholder vote, and which the non-Fox shareholders would not therefore have the opportunity to defeat. For example, shareholders have no say in the day to day running of a company and would not typically have a say on the appointment of senior executives within a company.
- 7.57 Ed Miliband et al submitted that Sky's shareholders have shown that they have some constraining impact on Fox and the Murdoch family's influence as evidenced by (i) their public opposition to James Murdoch's appointment and reappointment as Sky Chairman in 2016 and 2017; and (ii) James Murdoch stepping down in 2012 from Sky to protect the company post Leveson. Ed Miliband et al submitted that the Sky non-Fox shareholders could raise

¹⁸² Fox [initial submission](#), paragraph 2.5.

¹⁸³ [Sky AGM voting results](#).

¹⁸⁴ The 71.55% is calculated using only voting capital that was instructed. Around 15% of Sky's share capital was not instructed at this AGM increasing Fox's share of votes cast beyond 37.14%.

concerns about the appointment of a new Head of Sky News if that person was seen to be too close to Fox and damaging to the Sky News brand.¹⁸⁵

- 7.58 We received differing views from Sky's non-Fox shareholders with some shareholders we spoke to telling us they have the impression that Fox already effectively has control over Sky.¹⁸⁶ Others told us that they consider Jeremy Darroch, CEO of Sky, to be independent and James Murdoch's influence as Sky Chairman to be no more than that of any board chairman.¹⁸⁷
- 7.59 The non-Fox shareholders that we spoke to said that Sky News was not a significant part of the Sky business and, while recognising that it had brand value, it was not something that they paid any attention to. Non-Fox shareholders were concerned about the value of Sky overall. Insofar as changes to Sky News would undermine that value they might be expected to raise concerns. It is not, however, clear that a change in Sky's editorial position (whether an increased editorial alignment with News UK newspapers or Sky News becoming more like Fox News or some other change) would be perceived as being likely to undermine Sky's value as a whole, noting that Sky News itself is loss making.
- 7.60 Our provisional view is that the presence of non-Fox shareholders in Sky acts as a constraint on the exercise of control by the MFT over Sky which is primarily exercised directly through their votes at the company's AGMs and indirectly through their discussions and relationships with the independent directors.

James Murdoch's role as Chairman of Sky

- 7.61 As with the MFT's control over Fox (see paragraph 7.15) we have looked at the role James Murdoch has as Chairman of the Sky board to understand the extent to which that enhances the control that the MFT exercises over Sky. We also set out further links between Sky and the MFT through other Sky directors.
- 7.62 As a member of the Sky board, James Murdoch has a role (alongside the other directors) in the appointment of the CEO and the Chief Financial Officer (CFO) because such appointments are made by the board, following recommendations made by Sky's Corporate Governance and Nominations Committee. The chairman of the Sky board would not have any formal role in

¹⁸⁵ [Ed Miliband et al submission to the issues statement](#).

¹⁸⁶ [Transcript of hearing with MFS Investment Management](#), page 7, line 4.

¹⁸⁷ [Hearing with Legal and General](#), page 12, lines 10 to 21.

appointing other senior staff within Sky, although the board would likely be informed of all appointments that the Sky CEO considered significant.

- 7.63 A key responsibility of the Sky chairman is being a direct liaison between the board and CEO. Sky told us that its CEO would speak to James Murdoch every couple of weeks in his role as Chairman.¹⁸⁸ Other board members may contact the CEO whenever they have a query and consider it appropriate.
- 7.64 James Murdoch's ability to influence decisions taken by Sky's board is enhanced by the presence of two Fox affiliated directors, Chase Carey and John Nallen. Nonetheless collectively they only make up three of Sky's 11 directors and the other eight directors are independent, relatively recently appointed and without any ties to the Murdoch family, Fox or News Corp.¹⁸⁹

Constraint by Sky's independent directors on the MFT's control of Sky

- 7.65 Viet Dinh, independent director of Fox, told us that Sky was an independent, listed public company that was not controlled by Fox.¹⁹⁰ Consistent with this view, Mr Dinh told us that the question the Fox independent directors asked themselves when considering the Transaction was 'Does this make sense where we commit such a significant amount of capital but we do not have effective control and cannot consolidate the operations and finances of Sky?'. Mr Dinh went on to describe the holding in Sky as 'unstable' and that the decision the Fox board had had to make was whether they sold their holding in Sky or acquired the remaining 60%.
- 7.66 From Mr Dinh's comments, it is apparent that Sky currently enjoys significant independence from Fox and that Fox is seeking greater control of Sky so that it could consolidate its operations with the wider Fox business. This is one of the stated reasons for the rationale for the Transaction.
- 7.67 Sky told us that Fox does not have effective control of Sky currently. Sky's board is comprised of a majority of independent directors. Strategy and execution come from Sky's management.¹⁹¹ As with all members of the board, the Fox affiliated directors bring a range of insights and experience, and play the role that would be expected of directors in terms of helping to shape Sky's

¹⁸⁸ [Summary of hearing with Sky](#), paragraph 11.

¹⁸⁹ See by way of contrast the independence of Fox's independent directors discussed in paragraphs 7.18 to 7.22.

¹⁹⁰ [Summary of hearing with Viet Dinh](#), page 6

¹⁹¹ [Summary of hearing with Sky](#), page 2, paragraph 8.

success. Outside of this, Fox did not influence the broad strategic direction of Sky.¹⁹²

- 7.68 Sky also told us that there are three pillars that underpin how Sky News operates and ensures its editorial independence. These are (i) the people and culture at Sky News, (ii) its brand and reputation of trust, and (iii) the Broadcasting Code.¹⁹³ We consider these in chapter 8.
- 7.69 We spoke to two of the independent directors at Sky, the deputy chairman Martin Gilbert and the senior independent director Andrew Sukawaty, who told us that one of their key responsibilities was to protect shareholder value for Sky's non-Fox shareholders.^{194,195} They considered they would have influence on the appointments of senior management that report to the CEO.¹⁹⁶
- 7.70 In relation to Sky News, the independent directors of Sky told us that there is very little oversight of Sky News at the board level (as it is dealt with by management), but it would be discussed at board meetings if necessary (for example where there were health and safety or regulatory issues). One of Sky's independent directors told us they only met the Head of Sky News once, at an informal lunch, in their time at Sky. The independent directors told us that Sky News was considered a well-run independent unit within Sky with complete editorial independence and minimal input from the independent directors.¹⁹⁷ Sky explained that the Head of Sky News reported directly to the Managing Director of Content of Sky but was largely autonomous.¹⁹⁸
- 7.71 In relation to the appointment of senior Sky News staff, the independent directors at Sky told us that if John Ryley was replaced as Head of Sky News, they would not be involved in the appointment of his successor.¹⁹⁹ Specifically we were told that it was likely that the CEO would explain his strategy to the independent directors and how he had reached a conclusion on the new appointment, but that the independent directors would not be directly involved in the decision. This would be consistent with the approach taken in relation to other significant appointments, such as the Head of Content, in the past.²⁰⁰
- 7.72 We note that John Ryley's tenure as Head of Sky News has been lengthy (it is a post he has held since 2006) and that there is no established process for

¹⁹² [Summary of hearing with Sky](#), page 2, paragraphs 8 and 9.

¹⁹³ [Summary of hearing with Sky](#), page 1.

¹⁹⁴ [Summary of hearing with Sky independent directors](#), paragraph 2.

¹⁹⁵ [Summary of hearing with Sky independent directors](#), paragraph 14.

¹⁹⁶ [Summary of hearing with Sky independent directors](#), paragraph 7.

¹⁹⁷ [Summary of hearing with Sky independent directors](#), paragraph 18.

¹⁹⁸ [Summary of hearing with Sky](#), page 3.

¹⁹⁹ [Summary of hearing with Sky independent directors](#), paragraph 18.

²⁰⁰ [Transcript of hearing with Independent Directors of Sky plc held on 25 October 2017](#), page 16 lines 1 to 11.

the appointment of a replacement or clearly established parameters about who should (or should not) be involved in that decision.

- 7.73 We were told by the independent directors that Sky News has complete editorial independence from the board and that in their experience, no concerns had been raised at the board in relation to undue influence by the members of the Murdoch family in editorial decisions. Moreover, we were told that if there were any such attempts, these would be raised by management with the board.²⁰¹
- 7.74 Our provisional view is that the statements of Viet Dinh, Jeremy Darroch, Sky independent directors, and John Ryley provide a sound basis to conclude that Sky and Sky News is managed independently from the MFT and that, while the MFT does have material influence over Sky, the extent of control is significantly constrained by the presence of independent directors. In relation to Sky News while there has to date been little if any involvement by Sky's independent directors in relation to editorial matters if there were concerns about undue influence by members of the Murdoch family in relation to editorial matters these would be raised to the board.

Other ways in which the MFT may exercise control over Sky

- 7.75 Given James Murdoch's previous role as CEO of Sky, Rupert Murdoch's previous time as Chairman and his involvement in the founding of Sky, they, and by extension the MFT,²⁰² (as discussed in relation to Fox at paragraph 7.11 and in relation to News Corp from paragraph 7.31) might be expected to be able to exercise a greater degree of influence over Sky and Sky News than James Murdoch's formal position as a Chairman of the board might imply.

Rupert Murdoch's involvement in the creation of Sky and Sky News

- 7.76 Fox (at the time it was News Corporation) was a founding shareholder in Sky, when Rupert Murdoch was CEO of News Corporation and has been a shareholder for almost 30 years; a period of time that covers the creation of Sky News.
- 7.77 Rupert Murdoch played a key role in establishing Sky News. Mr Neil, who launched Sky News in 1989, told us that at no point during his time at Sky did Rupert Murdoch try to influence the content or strategy of Sky News. Mr Neil

²⁰¹ [Summary of hearing with Independent Directors of Sky plc held on 25 October 2017](#), paragraph 18.

²⁰² See paragraphs 61 to 65.

also told us that both he and Rupert Murdoch were focused on establishing a 24-hour news channel in creating Sky News.²⁰³

- 7.78 David Elstein, a former Head of Programming at Sky in the 1990s, told us that he was not appointed as Head of Programming at Sky until he had flown out to Los Angeles and met Rupert Murdoch. Mr Elstein told us that if Rupert Murdoch had wanted to alter Sky News he could have, but did not.²⁰⁴
- 7.79 In a number of hearings, most notably with the cross-party group of MPs and Lords, we were directed to a comment reportedly made by Rupert Murdoch to the House of Lords Communications Committee in 2008 that the only reason that Sky News was not more like Fox News was that ‘nobody at Sky listens to me’.²⁰⁵ We do not place weight on this comment given its age and the lack of context.
- 7.80 Currently, Rupert Murdoch has no formal responsibilities for the management or governance of Sky. This is in contrast to his involvement in Fox News (where he is acting CEO) and News Corp where he is Executive Chairman and has, over time, had frequent discussions with Mrs Brooks (as CEO of News UK) and discussions with the editors of The Sun, The Times and The Sunday Times. We have not identified any evidence to suggest that Rupert Murdoch exercises informal influence over the editorial position of Sky News.

James Murdoch’s previous role as CEO of Sky

- 7.81 From 2003 to 2007, as CEO, James Murdoch had responsibility for executing Sky’s long term strategy. He was responsible for the appointment of key staff, several of whom remain at Sky and have an ongoing influence on the decisions it makes and its culture. James Murdoch was the CEO of Sky in 2004 when Jeremy Darroch was appointed as Sky CFO, and Jeremy Darroch became CEO of Sky shortly after James Murdoch stepped down from that role and became Chairman. James Murdoch played a significant role in Jeremy Darroch’s appointment to CFO and to CEO of Sky. A number of other senior executives at Sky, including John Ryley, Head of Sky News, remain in place having been appointed during James Murdoch’s time as CEO of Sky. John Ryley was appointed the Head of Sky News in 2006.²⁰⁶

²⁰³ [Transcript of hearing with Andrew Neil](#), page 9, line 2 to-5, line 12 to 13.

²⁰⁴ [Transcript of roundtable on media plurality roundtable](#), page 57, line 22.

²⁰⁵ House of Lords Communications Committee (2008), page 119, paragraph 47.

²⁰⁶ James Murdoch was not directly involved in John Ryley’s appointment. John Ryley was appointed by Dawn Airey in 2006, who was Managing Director of Channels and Services at that time. See [Sky initial submission](#), paragraph 3.13.

7.82 James Murdoch could potentially seek to increase his informal influence over decisions at Sky due to his previous position and Rupert Murdoch's history with Sky. We have found no evidence of this. We do not believe that James Murdoch has regular contact with anyone with direct editorial control of Sky News.

Difference between the extent of control exercised by the MFT over Sky and the extent of control that is currently exercisable

7.83 We set out earlier our provisional view of how the MFT exercises control over Sky through its shareholding and James Murdoch's role as Sky's Chairman. In both instances, our provisional view is that the extent of control exercised by the MFT is significantly constrained by non-Fox shareholders and Sky's independent directors. These constraints apply to the extent of control that is exercisable by the MFT over Sky and Sky News. For example, our provisional view is that if members of the Murdoch family were to exercise undue influence in relation to editorial decisions at Sky News, it would be a matter which would be escalated to the board. On that basis we provisionally conclude that, absent the Transaction, the MFT would not be able to exercise significantly more control over Sky and Sky News than it currently does.

Impact of the Transaction on the extent of the MFT's control over Sky

7.84 In assessing the impact of the Transaction on the extent of control exercisable by the MFT over Sky and Sky News, we have sought to understand how Sky will be controlled and operated by Fox once it has full control of Sky. An assessment of the impact of the Transaction is necessarily prospective – see section 'Actual extent of the MFT's control over Sky' (from paragraph 6.27). We therefore consider that it is relevant to take into account the extent of the control exercisable by the MFT following the Transaction (in other words, the control that the MFT would be able to exercise over Sky and Sky News following the Transaction, subject to any constraints on that control). Accordingly, we have focused in this section on the change brought about by the Transaction in the actual extent of control exercisable by the MFT over Sky and Sky News.

7.85 The MFT currently exercises material influence over Sky through its indirect ownership (ie through Fox's approximately 39% holding in Sky), the fact that James Murdoch is Chairman of Sky, having previously been CEO, the presence of two non-independent Fox directors on the Sky board, and Rupert and James Murdoch's close involvement in the development of the Sky business over time. However, we consider that the extent of any additional

control exercised and exercisable by the MFT over Sky is currently circumscribed by the fact that Sky is a UK listed public company with its own independent board of directors and shareholders that have sought to challenge certain resolutions, including the appointment of James Murdoch as Chairman. Furthermore, evidence we have obtained from Sky and from Fox's independent directors indicates that Sky currently operates as an independent business over which Fox itself does not exercise and would be unable to exercise effective control. We therefore consider that the control exercised and exercisable by the MFT over Sky currently, although amounting to material influence for the purpose of the Act, is relatively low.

- 7.86 Following the Transaction, Sky will no longer be a UK listed public company and will instead be a wholly owned subsidiary of Fox. James Murdoch was asked, at the main party hearing, whether he would expect there to be a UK board for Sky following the Transaction. His response was that in his experience:

you do not really have a board structure that you manage through. That would seem to be superfluous. That said you certainly do in many cases bring together groups of people and have advisory boards or other things like that. That has not been decided. At this point the detailed management structure or restructuring that goes on is a question for the future. It is not something that we have decided on. I would like to keep it going. I would like to keep the team in place.

- 7.87 Taking account of this response, our provisional view is that following the Transaction it is likely that there will not be an effective local board equivalent to that at Sky prior to the Transaction providing independent governance over Sky. Instead we believe that Sky will effectively be controlled by Fox management with governance oversight by the Fox board based in the US. While we expect Fox to maintain Sky's incorporation in the UK, noting that Sky's broadcasting licences are held by UK entities and the statutory requirement under UK company law for a company to have at least two directors, we do not expect its directors to provide a constraint on the exercise of control by Fox. We note in that regard the corporate arrangements that News Corp has in place in the UK, whereby the director appointments of each company appear to be limited to a small number of executives. For example, the directors of News UK (ie News Corp UK & Ireland Limited) listed at

Companies House are Mrs Brooks (CEO), David Dinsmore (COO) and Christopher Longcroft (CFO).²⁰⁷

- 7.88 On that basis, the level of control the MFT will be able to exercise over Sky and Sky News following the Transaction will be the same as that it currently exercises over Fox. As set out in paragraph 7.23, that is a high degree of material influence albeit falling short of de facto control within the meaning of the Act. This control is exercised through the MFT's shareholding in Fox and the positions held by Rupert, Lachlan and James Murdoch on the Fox board.
- 7.89 We therefore consider that the direct impact 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. We have not found specific incidences where the current independent directors and other shareholders of Sky acted as a constraint in relation to any potential interference in the editorial direction of Sky News by the MFT, but this should be seen in the context of the MFT's limited ability to exercise control over Sky and Sky News currently. In that regard, we consider that the constraint on the MFT's ability to exercise control post Transaction is likely to be considerably weaker than the existing combined double layer of formal constraints on the MFT's exercisable control, in the form of both Fox and Sky's independent directors and shareholders.
- 7.90 The significance of the loss of Sky's independent directors as a constraint on the ability of the MFT to exercise control is magnified by our provisional finding that a number of Fox independent directors have closer ties to the MFT than the independent directors of Sky (see paragraph 7.21). This may have a particular impact given that, whereas the independent directors of Sky are familiar with the UK media market and are likely to form their own view on issues of media plurality and broadcasting standards, the independent directors of Fox are more likely to defer to James, Lachlan or Rupert Murdoch when considering issues that relate to those matters, given the familiarity of, in particular, James and Rupert Murdoch with Sky's UK business and the UK media market.
- 7.91 Furthermore, following the Transaction, the Fox board will have oversight over a range of business divisions of which the Sky business is only one and

²⁰⁷ [Companies House, News Corp UK and Ireland Limited \(Company number 00081701\)](#).

where Sky News, already a relatively small part of the Sky business, will be a much smaller part of a far larger combined Fox and Sky business.

- 7.92 We note that the increased ability of the MFT to exert influence 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, 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 changes in the positioning of Sky News or influence over its agenda. In relation to the appointment of editorial positions within Sky News we note the lack of established process for the appointment or replacement of the Head of Sky News including who should (or should not) be involved in that decision. Our provisional view is that in circumstances where the MFT has increased ability to exercise control over Sky and Sky News post Transaction, this relatively informal process may facilitate the exercise of influence by the MFT over this decision.
- 7.93 Third parties have submitted that we should put considerable weight on the fact that the MFT's level of ownership of Sky will be similar to its ownership of News Corp and that the evidence indicates that Rupert Murdoch uses informal channels to speak to the editors of News Corp's UK newspapers. We note that, in contrast, there is no evidence to suggest that this happens currently in relation to Sky News, which we consider in part may be a reflection of the constraints currently in place preventing the exercise of such informal influence. However, after the Transaction Rupert Murdoch (as Co-Executive Chairman of Fox) will have formal responsibilities towards Sky, and this may facilitate the use of informal channels between him and Sky News. Even if such channels do not develop, the example of control exercised in relation to News UK shows how the MFT is able to exercise significant influence over a wholly owned subsidiary in a way it could not do over Sky currently.
- 7.94 In light of the above, and in the context of the extent of control currently exercised and exercisable by the MFT over Sky and Sky News, 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. We consider that the loss of the current Sky board and its independent directors, in particular, will increase the ability of the MFT to control Sky and Sky News post Transaction.
- 7.95 Our view is that although the MFT will not have full ownership of Sky following the Transaction, the significant extent of the increased control it will be able to

exercise is sufficient to give rise to concerns that, as a result of the Transaction, 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. We consider that these types of alignment have 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.

- 7.96 We set out in chapter 8 our provisional conclusions on the effects of internal plurality and other contextual factors that might act as safeguards that would counterbalance the increased level of control discussed earlier. However, first we set out our reasoning in relation to whether, in addition to the ERMS we have provisionally found between Fox and Sky, there is an additional ‘ceasing to be distinct’ between the MFT and Sky. This reasoning provides the basis for our provisional jurisdictional finding on this point set out in paragraph 4.20.

Assessment of a ‘ceasing to be distinct’ between the MFT and Sky (for jurisdictional purposes)

- 7.97 As stated in chapter 4 on jurisdiction and counterfactual (paragraph 4.20) we have provisionally considered whether for jurisdictional purposes, in addition to Fox and Sky, there is a second ceasing to be distinct between the MFT and Sky. This would depend on there being a change in the level of control. The basis on which we provisionally came to the conclusion that the MFT currently has material influence over Sky and will have, in jurisdictional terms, material influence after the Transaction is explained below.

The MFT’s current material influence over Sky

- 7.98 In assessing the level of control for jurisdictional purposes we have had regard to our mergers guidance on jurisdiction and procedures (CMA2). Paragraph 4.15 of CMA2 provides:

Assessment of material influence requires a case by case analysis of the overall relationship between the acquirer and the target. In making its assessment, the CMA will have regard to all the circumstances of the case.²⁰⁸

- 7.99 The guidance then sets out three potential sources of influence shareholding, board representation and ‘other sources’, but notes that the variety of

²⁰⁸ CMA2.

commercial arrangements entered into by businesses makes it difficult to state categorically what will (or will not) constitute material influence.²⁰⁹

7.100 In this instance, we have taken into account the actual extent of control exercised by the MFT over Fox (see from paragraph 7.10 above) through both its shareholding and the Murdoch family's role on the Fox board (James Murdoch as CEO and Rupert Murdoch and Lachlan Murdoch as co-executive chairmen). We consider that this gives the MFT the ability to exercise significant influence over Fox's shareholding in Sky. The Sky shareholding is widely held²¹⁰ and there are no other substantial shareholders. This is discussed above from paragraph 7.52 onwards. Fox's influence over Sky is further enhanced by the presence of two Fox affiliated directors (see paragraph 7.64). In addition, the MFT, through James Murdoch has a presence on Sky's board as Chairman, a role with particular influence.

7.101 Accordingly, we provisionally conclude that the MFT currently has material influence over Sky.

The MFT's material influence over Sky after the Transaction

7.102 We have set out previously, our consideration of the control exercised and exercisable by the MFT over Fox currently and the impact of the Transaction on the actual extent of control exercisable by the MFT over Sky. There is no question that the MFT has, at least, material influence over Fox given its shareholding and the presence of James Murdoch as CEO and Rupert and Lachlan as co-executive chairmen.

7.103 As explained in chapter 4, the European Commission concluded that Fox (with a share of voting rights of 37.19% and three representatives on the board) does not currently have decisive influence within the meaning of article 3 of the EU Merger Regulation. This was for five reasons:

(a) Fox does not hold the majority of voting rights;

²⁰⁹ Paragraphs 4.19 and 4.20 of CMA2 indicate that there is a presumption of material influence with a shareholding of above 25% and only exceptionally a shareholding of less than 15% will amount to material influence. This guidance assumes, however, direct ownership and cannot be directly applied in circumstances where there is indirect ownership. It would not, for instance, be appropriate to multiply the MFT's (including Rupert Murdoch's) 38.9% share of Fox's voting rights with Fox's 37.19% of Sky's voting rights to calculate a shareholding of 14.4%.

²¹⁰ As at 18 January 2017, the only other shareholders with an interest of more than 2% were: (i) Blackrock, Inc – 5.22%; (ii) Franklin Resources – 4.09%; and Invesco – 3.56% see paragraph 11 of the [European Commission's decision in Case M.8354 – Fox/Sky](#).

- (b) there are no special rights attached to the shares held by Fox, which grant it the possibility of exercising control over Sky within the meaning of the Merger Regulation;
- (c) Fox did not hold more than 50% of the total of the present shares that voted at annual general meetings of Sky over the period 2012 to 2016;
- (d) strategic decisions (notably those related to the budget and the business plan) in Sky are taken at the level of the board on the basis of a majority of votes. Fox cannot impose or block decision making at this level. Only three of the 11 directors on Sky's board are affiliated to Fox;
- (e) ultimately Fox has no rights in relation to the passing or blocking of strategic decisions in Sky.²¹¹

7.104 The European Commission left open the question of whether the MFT has decisive influence over Fox. While de facto control or controlling interest under section 26 of the Act are distinct from the test applied by the European Commission and the Parties, we provisionally consider similar factors apply in relation to the control between the MFT and Fox. On that basis we provisionally conclude that while the actual extent of control exercised and exercisable by the MFT over Fox is significant, the level of control for jurisdictional purposes is neither de facto control nor a controlling interest because it does not have the right to appoint directors and does not control more than 50% of the votes at shareholders meetings.²¹²

7.105 As the MFT does not have de facto control over Fox currently, there is no basis on which we could conclude that the MFT would have de facto control or a controlling interest over Sky following the Transaction. We note however that the MFT is by a considerable margin the largest shareholder in Fox and has voted in favour of all resolutions passed by shareholders at a Fox AGM. We consider that the significant level of control exercised by the MFT over Fox is therefore at the high end of the scale of material influence within the meaning of the Act, not far short of de facto control.

7.106 Accordingly, based on the provisional findings set out in paragraphs 7.101 and 7.105 we provisionally conclude that Sky and the MFT do not 'cease to be distinct' as a result of the Transaction, within the meaning of the Act.

²¹¹ [Case M.8354 - Fox/Sky, paragraph 11.](#)

²¹² With the exception of 2013, the MFT has always had less than 50% of the votes at Fox AGMs.

8. Internal plurality and other contextual factors

- 8.1 We have considered the Parties' submissions that there are constraints or safeguards on the influence of the MFT over the news provision at Sky News and News Corp which, when considered cumulatively, provide an effective safeguard against any increased ability of the MFT to exercise control over Sky and Sky News. These are²¹³:
- (a) the effects of the internal governance in place within Fox, with continued oversight from a majority of independent shareholders and a majority independent board (enhanced by the board resolution);
 - (b) the culture of the newsrooms and editorial independence;
 - (c) audience expectations; and
 - (d) the impartiality rules in the Broadcasting Code.
- 8.2 The constraints identified by the Parties on the ability of the MFT to exercise control in relation to editorial matters go to the question of the extent to which there will be 'internal plurality' (or, in other words, a range of voices or viewpoints) within the media enterprises controlled by the MFT. We have considered these in light of contextual factors including the fact that the MFT will not exercise de facto control or have a controlling interest over either Sky or News Corp post Transaction within the meaning of the Act, has not historically interfered in relation to Sky News' editorial position, and that different News UK newspaper titles have taken different editorial lines on major issues (such as the EU referendum in 2016 and the endorsement of political parties at general elections).²¹⁴
- 8.3 Our approach to internal plurality is set out from paragraphs 6.36 to 6.40. In it we provisionally conclude that the degree of control actually exercised by the MFT over Sky and Sky News in the future may increase over time within the extent of control that the MFT will be able to exercise post Transaction, without triggering a new inquiry. We note that the media plurality consideration focuses on the sufficiency of plurality of persons with control of media enterprises, rather than the sufficiency of viewpoints across and within media enterprises. We take this into consideration when assessing the weight to be attached to internal plurality and other contextual matters.

²¹³ [Fox initial submission to the CMA on Media Plurality](#), paragraph 4.33.

²¹⁴ [Fox's response to the Secretary of State's provisional decision on reference – Annex 1 of its initial submission on media plurality](#), paragraph 4.33.

8.4 In addition, we have been mindful that we are not only concerned with an outcome whereby there is full editorial alignment across Sky News and News Corp. We consider that even without such full alignment across the MFT controlled media enterprises, the Transaction could raise concerns where there is a potential for increased editorial alignment.

Board resolution

8.5 Fox told us that it has no intention to exercise influence over editorial matters at Sky News post Transaction. To ensure the independence and integrity of Sky News content Fox has proposed independent board oversight of the hiring and dismissal of the Head of Sky News, and of any changes to the Sky News Editorial Guidelines.²¹⁵

8.6 To this end, on 20 April 2017, Fox passed a board resolution that states that the Sky News Editorial Guidelines will remain in place and that the following matters will require approval of the Fox Nominating and Corporate Governance Committee (NCGC):^{216,217}

- (a) the appointment or removal of the Head of Sky News (including any material changes in terms and conditions which could give rise to constructive dismissal);
- (b) any material changes to the authority or reporting relationship of the Head of Sky News; and
- (c) any future changes to the Sky News Editorial Guidelines.

8.7 As noted in paragraph 7.72, 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. In such circumstances, there is unlikely to be a clear basis or criteria on which the independent directors on the NCGC can judge which candidates for the role would be best suited for the position or whether the MFT, through Rupert, Lachlan or James Murdoch, has not exerted undue informal influence over the appointment.

8.8 While we expect the independent directors on the NCGC to act in accordance with their fiduciary duties in respect of Fox, we consider that in many instances a decision that might give rise to a plurality concern would be in the

²¹⁵ Fox initial submission, page 3.

²¹⁶ The Nominating and Corporate Governance Committee is comprised solely of independent directors. The NCGC is responsible for oversight of board appointments and of corporate governance matters generally. See [NCGC charter](#).

²¹⁷ Fox initial submission, paragraphs 2.25 to 2.27.

commercial interest of Fox (and its shareholders) and therefore consistent with these fiduciary duties. As noted in paragraph 7.92, Fox may seek to make Sky News more commercially successful and appoint editors and make changes to its editorial guidelines to achieve these aims. If such decisions resulted in less plurality (possibly but not necessarily by increasing the role of CEO or co-executive chairmen over editorial policy) it is not clear on what grounds the independent directors' need to comply with their fiduciary duties would prevent this. Whether there is a commercial incentive in the light of audience expectations which would prevent the MFT from exerting such influence is discussed from paragraph 8.21.

- 8.9 Sky News is loss-making and even if, as Fox has submitted is the case, the brand value ascribed to Sky News by Sky means it will continue to be a commercial asset under Fox's full ownership, this may not persist over time. In that regard, we note that Sky has submitted to us that the continued provision of Sky News should not simply be assumed when considering the level of media plurality absent the Transaction. Sky told us that it would likely be prompted to review the position in the event that the continued provision of Sky News in its current form unduly impeded merger and/or other corporate opportunities available in relation to Sky's broader business, such as the Transaction – in particular having regard to any views expressed by shareholders regarding the denial of such opportunities.
- 8.10 In addition members of the NCGC have no experience of the UK TV news sector or UK broadcasting industry more generally.²¹⁸ In that context, given their extensive experience of the UK market and direct current and historic involvement with the Sky business, we consider that Rupert and James Murdoch would be likely to have considerable opportunity to influence the recommendation for any new Head of Sky News. This is particularly the case in circumstances where Sky News will comprise a very small part of the overall Fox business and over which the Fox independent directors on the NCGC would have limited visibility. In our view, it is likely that the independent directors will rely heavily on recommendations made to it regarding suitable candidates for the role and may in doing so look to James, Lachlan and Rupert Murdoch to guide them.
- 8.11 Finally, there is some evidence, as discussed in paragraph 7.43, that even when undertakings, such as the 1981 Times Undertakings, have been given as formal commitments (which would not be the case with a board resolution) there is evidence to suggest they have not constrained Rupert Murdoch's

²¹⁸ [Fox independent director profiles](#). The members of the NCGC are Viet Dinh, James Breyer, Robert Silberman, Tidjane Thiam.

involvement and influence. In this instance, the board resolution is an internal governance mechanism that ultimately could be revoked in due course by the Fox board, notwithstanding the fact that any such revocation or change would require a majority of independent directors to vote in favour.

- 8.12 Therefore, we provisionally consider that the resolution is unlikely to have a significant effect on the increased ability of the MFT to exercise control over Sky and Sky News which would be brought about by the Transaction.

Culture of the Sky News newsroom

- 8.13 The second constraint put forward by the Parties is a culture of independence and the practicalities of devolved editorial decision making in TV news generally, and in particular at Sky News. Sky News currently operates as an independent unit within Sky and has a strong culture of editorial independence; senior editors with resistance to influence, published editorial guidelines, and a reputation for quality broadcasting. No one has disputed this view.

- 8.14 Sky told us in its initial submission that:

Throughout Sky's 28 years of investment in Sky News, Sky News' editorial independence has been enshrined through clearly delineated organisational structures and internal procedures which are ingrained in the culture of Sky and more particularly Sky News. Sky's commitment to editorial independence is driven by the commercial benefits of an independent Sky News to Sky as a broadcaster and pay TV retailer. Those commercial drivers are reinforced by a strong and deep-rooted culture of independence (and vice versa), itself underpinned by rigorous legal safeguards.

- 8.15 Mr Neil told us that he considered that Sky News' journalism was of the highest calibre. Mr Neil also told us that Rupert Murdoch had a different attitude towards the newspapers where he regarded himself as editor-in-chief.²¹⁹

- 8.16 The Sky News editorial team told us that neither Fox, nor anyone at Fox (including Rupert Murdoch), had tried to communicate with anyone within Sky News, nor were they involved in the appointment of John Ryley, the current

²¹⁹ [Transcript of hearing with Andrew Neil](#), page 4, line 15 to 17.

Head of Sky News. Sky did not consider that the Transaction posed a risk to this.

- 8.17 We do not doubt the professionalism, integrity and reputation of Sky News and the editors and journalists that work there today. We also recognise that they are likely to act as a constraint, at least in the short term, to dramatic changes in Sky News' editorial position or relationship with News UK titles.
- 8.18 The Transaction, however, would increase the MFT's ability to influence the appointment of senior staff. This gives it greater ability to more easily influence the editorial position of Sky News. The MFT would be able to do so without being concerned about the potential for Sky or Sky News staff or executives to raise concerns with Sky's independent directors as these would no longer exist post Transaction. Sky's staff would be much less able to raise concerns about changes that undermine Sky News' independence to Fox's independent directors. The Transaction would also increase the MFT's ability to set the commercial direction and priorities of Sky and Sky News. This may, for example, be in the form of a greater focus on advertising revenue. This would not necessarily create a conflict with editorial independence but could create a tension which over time would change the culture of Sky News.
- 8.19 We recognise that the current culture at Sky News, which has been shaped by its operation as an independent unit with limited board level involvement, may act as a constraint on the ability of the MFT to exercise control in the short term. However, we provisionally consider that there is no inherent reason for such a culture to persist and that it could be changed over time with changes in key personnel. We provisionally consider that the risk of some journalists deciding to leave as a consequence would not be sufficient to guard against such changes being made. We also note that the style and editorial content of TV news is differentiated across TV news providers in the UK and, as such, it is possible to have a TV news provider with a culture that is focused on a particular editorial outlook or strategy.
- 8.20 This provisional view can be contrasted with the CC's conclusion in Sky/ITV where (combined with regulatory mechanisms) a strong culture of editorial independence was considered likely to be effective in preventing plurality concerns (see paragraph 8.40). The CC's finding in that regard was based on the limitations on the extent of control a 17.9% stake in ITV gave B SkyB, which did not for instance give B SkyB the ability to exert significant commercial influence over ITV's news output or more widely over ITN and where any significant increase in share ownership was limited by the 20/20

rule.²²⁰ For the reasons given in chapter 7 we do not provisionally conclude that to be the case in relation to the Transaction.

Audience expectations

- 8.21 The Parties have submitted that UK audiences' expectations regarding the independence and impartiality of broadcast news (and of Sky News in particular) would make any attempt to exercise influence through broadcast news highly visible and self-defeating. Viewers would switch away if they thought that Sky News' independence and impartiality were diluted, which would adversely impact both the commercial contribution Sky News makes and any influence that it has as a news outlet.²²¹
- 8.22 Ofcom concluded in its Public Interest Report that audience expectations in and of themselves are unlikely to ensure the editorial independence of Sky News post Transaction, as such expectations provided less of a constraint where editorial influence is subtle and not immediately obvious.²²² We set out in chapter 11 and in our discussion of the Broadcasting Code that changes which may occur post Transaction, such as story selection, prioritisation and omission, can be subtle. We therefore provisionally agree with Ofcom that such changes, which fall short of full editorial alignment or major programming changes, may not be immediately apparent to viewers.
- 8.23 The Parties' arguments relating to UK audiences' views on the impartiality of TV news are reflected in the data on impartiality presented in paragraphs 11.37 to 11.44 where we provisionally find that, in general, broadcast news is seen as more impartial compared to print media. However, the data does not indicate that views on impartiality are appreciably affected by the different editorial lines taken by different broadcast news providers. For example, Channel 4 News has a different editorial focus compared to the BBC or ITV, and yet its scores in terms of impartiality are broadly comparable.²²³
- 8.24 This suggests that members of an audience of a particular broadcast news provider are either broadly sympathetic to the editorial positioning of their chosen channel (such that they consider the output to be impartial), or that editorial positioning within the bounds of what is possible under the Broadcasting Code is such that it does not affect the overall view of impartiality. It is also possible that the general expectation that broadcast TV

²²⁰ CC Report in Sky/ ITV, paragraph 40.

²²¹ See, for example, Sky, [initial submission](#), paragraph 3.24 and Fox, [initial submission on media plurality](#), paragraph 4.34(iv).

²²² [Ofcom Public Interest Report](#), paragraph 9.14.

²²³ In fact, Channel 4 News' NCS score for 'impartial and unbiased content' is marginally higher than the BBC's (see Figure 11.2).

news is impartial may colour audience perceptions that what they are shown will be impartial.

- 8.25 Further, we note that viewer expectations can change over time and that even if changes result in the loss of some viewers, it may result in gaining others. This means that there may not be a significant commercial impact outweighing any gain in influence.
- 8.26 Our provisional view is that audience expectations do not provide a significant safeguard to counterbalance the increased ability of MFT to exercise control of Sky and Sky News that would be brought about by the Transaction.

Broadcasting Code restrictions

- 8.27 While it is true that the Broadcasting Code imposes restrictions on broadcast licence holders as to due accuracy and due impartiality in news and as to special impartiality in matters of political or industrial controversy and matters relating to current public policy,²²⁴ the terms of the Broadcasting Code and the manner in which it is applied by Ofcom, leave a significant, though not unlimited, latitude to licence holders to align output towards a particular viewpoint.

Editorial prioritisation and agenda setting

- 8.28 First, an important limitation on the ability of the Broadcasting Code to prevent or inhibit editorial alignment is the fact that the Broadcasting Code does not generally seek to regulate editorial prioritisation or the editorial agenda adopted by a broadcaster.²²⁵ It is perfectly permissible for a broadcaster to have a particular editorial focus or set of interests which it tends to promote or pursue. Such editorial decision-making encompasses, among other things: decisions as to which items to cover or which to omit; the amount of airtime to give to particular stories or issues; the prominence accorded to particular types of stories; the tone of coverage (for example, sensationalist, analytical or in-depth); and decisions regarding where to concentrate editorial resources (for example, investigative journalism into public interest issues or discussion programmes). These matters of editorial judgment and decision making are not generally regulated by the Broadcasting Code but, individually and collectively, they can contribute to the editorial alignment of a channel. This can be seen among existing TV news broadcasters, a number of which adopt

²²⁴ See section five, the Broadcasting Code.

²²⁵ We note that in its [initial submission on media plurality](#), Fox relies on a joint opinion of Lord Pannick QC and David Lowe. 15 December 2010, which finds that the Broadcasting Code does apply to the relative prominence afforded to a news story or type of story.

editorial approaches which are recognised as distinctive. The editorial approach of Channel 4 News, for example, is distinctive from that of ITV or Channel 5. Various contributors in our roundtable discussion on media plurality noted that Channel 4 News had distinctive values which informed its editorial approach.²²⁶ Similarly, Al Jazeera adopts a particular focus in its coverage, as does Russia Today.

8.29 As Ofcom stated in its Public Interest Report:

The provisions of the Broadcasting Code cannot address editorial decision making in terms of which stories may be prioritised. The Broadcasting Code does not seek to influence such editorial decisions and to do so would raise serious concerns around freedom of speech. In any event, such influence may take subtle forms which would not be picked up by the Broadcasting Code, for example through the selection or omission of particular news items.²²⁷

8.30 Ofcom also emphasised that:

The requirement for ‘due impartiality’ is not absolute and broadcasters have a degree of editorial discretion in the style and the tone of a channel. [...] The Broadcasting Code allows us to consider complaints about impartiality or accuracy in relation to specific programmes. It does not provide for us to take a view on the overarching approach of a channel, for example, the specific news stories that it covers or its tone. A channel could become more partisan by sensationalising particular news stories. Alternatively, it could be done through its current affairs programming, where due impartiality is required only on political or industrial issues on which politicians, industry and/or the media are in debate, and on matters that relate to current public policy. [...] In that light, we do not consider that the impartiality rules of the Broadcasting Code are sufficient of themselves to ensure that the editorial stance of Sky News does not become aligned with the other news outlets under the influence of the Murdoch Family Trust.²²⁸

²²⁶ See, for example, [transcript of the roundtable discussion on media plurality](#), page 20.

²²⁷ See [Ofcom Public Interest Report](#), paragraph 8.39.

²²⁸ See [Ofcom Public Interest Report](#), paragraphs 9.10 to 9.12.

News programmes, discussion and personal view programmes

8.31 In addition, the Broadcasting Code affords a significant degree of latitude to adopt a particular viewpoint where matters of current affairs are covered in a format involving authored or 'personal view' programmes. Such an approach is compatible with the impartiality requirements of the Broadcasting Code. Rule 5.9 of the Broadcasting Code provides, among other things:

Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of 'personal view' or 'authored' programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole.

8.32 The key requirement is that such programmes adequately canvass alternative viewpoints. The extent to which alternative viewpoints must be canvassed depends on a variety of contextual factors such as the nature of the topic under discussion, the nature of the programme and audience expectations. Within this broad framework, it remains possible for a discussion or personal view programme to take a particular tack. Again, the requirements of impartiality are not absolute, nor do they preclude the possibility of such output being positioned in a particular manner.

8.33 Insofar as news programming is concerned, broadcasters are free to adopt their own interpretation of the news, subject to the overall requirements of the Broadcasting Code, even though they may not put forward a subjective personal view in news output. It is right that the latitude for positioning in respect of news programming is more limited than in respect of discussion or personal view programming. However, the ability of broadcasters to adopt their own interpretation of the news, taken with the limited role of the Broadcasting Code in regulating matters of editorial prioritisation affords some scope for positioning in the context of news programming. As noted earlier, established broadcasters often adopt distinctive approaches to news coverage and this is permitted by the Broadcasting Code.

Online and on-demand content

8.34 Furthermore, we also note the limited scope of broadcast regulation and, consequently, of the Broadcasting Code and its requirements of due

impartiality, special impartiality and due accuracy.²²⁹ The complex jurisdictional requirements of the broadcasting regulation are described in more detail in Appendix B. For present purposes, it suffices to note that website and on-demand content produced by broadcasters, even where relating to news, is not generally covered by the Broadcasting Code unless, among other things, it is produced wholly or partly to be seen on TV and distributed in a way that makes it available to all members of the public. Broadcasters therefore have greater latitude in respect of editorial decision making in respect of online and on-demand content. Such content forms a significant element of the overall package of output produced by broadcasters.

The margin of discretion afforded to editorial judgements

- 8.35 Finally, we note that, when interpreting and applying the Broadcasting Code, Ofcom must also act compatibly with the rights set out in the ECHR and, in particular, the right to freedom of expression (article 10). As such, a degree of latitude is afforded to the editorial judgments of journalists and broadcasters as to the content of programmes in line with article 10 of the ECHR and, in the context of the exercise of rights of freedom of expression, decision makers must be cautious in making findings that the exercise of such rights has given rise to an infringement of the Broadcasting Code.²³⁰ This is significant in that compliance with the Broadcasting Code often involves editorial judgements, for example, as to the need to air alternative viewpoints. Judgements by an editor as to what is appropriate are accorded a margin of discretion in this regard.
- 8.36 Overall, we consider that the Broadcasting Code offers some protection against editorial alignment between Sky News and the News Corp newspapers, despite them being media enterprises controlled by the MFT. In particular, the requirements of due impartiality and due accuracy discussed earlier impose constraints in this regard. However, the protection against alignment afforded by the Broadcasting Code is, in our view, limited. Although the Broadcasting Code requires due impartiality and respect for the requirements of special impartiality, the Broadcasting Code affords licence holders a significant degree of latitude to adopt particular stances or viewpoints in their output, as can be seen in the nature of coverage provided by a number of established broadcasters.

²²⁹ See Appendix B.

²³⁰ See generally *R (Gaunt) v Office of Communications (Liberty intervening)* (CA) [2011] 1 W.L.R. 2355.

8.37 The degree of latitude available to broadcasters to position output is more limited in respect of news coverage. Nevertheless, the Broadcasting Code permits broadcasters to interpret news as they see fit and, as with other forms of coverage, the requirement of due impartiality in respect of news coverage depends on a number of contextual factors. As for other forms of current affairs output, there is a substantially greater degree of latitude for broadcasters to adopt a particular stance in respect of discussion programmes, or personal view programming, including on matters of political or industrial controversy or current public policy. In addition, the Broadcasting Code does not generally seek to regulate questions of editorial prioritisation or decision making in respect of the news or current affairs agenda of a broadcaster. Taking these various factors together, there is substantial scope for permissible changes in alignment or positioning to occur within the framework of the Broadcasting Code.

Diversity of editorial output within News UK

8.38 Fox in its response to the Secretary of State's provisional decision to make a reference submitted that the Ofcom Public Interest Report 'disregards the substantial differences between the approach and editorial lines of the News Corp newspapers more generally'.²³¹ Fox submitted that this is, for example, illustrated in the fact that The Times and The Sun took diametrically opposed editorial positions on Brexit.

8.39 We do not dispute that there is editorial diversity within News UK's newspaper titles. However, the media plurality consideration is directly concerned with the plurality of persons with control of media enterprises. In that regard, we consider that the significant increase in the extent of the MFT's control over Sky and Sky News may give rise to a concern based on the potential for increased editorial alignment and the fact that the MFT could use its increased control to influence the editorial position of Sky News, and consequently potentially align its position with that of the newspapers owned by News Corp.

The cumulative effects of the safeguards proposed by the Parties

8.40 Fox highlights the CC's decision in Sky/ITV in relation to the need to consider the cumulative effectiveness of different safeguards set out previously. We agree that this is necessary.

²³¹ [Fox's response to the Secretary of State's provisional decision on reference – Annex 1 of its initial submission on media plurality](#), paragraph 4.33.

Given the extent of the influence conferred on BSkyB by its acquisition of a 17.9 per cent shareholding in ITV, we conclude that **the regulatory mechanisms, combined with a strong culture of editorial independence within television news production**, are likely to be effective in preventing any prejudice to the independence of ITV news.²³²

- 8.41 Our provisional view is that increased influence by the MFT over Sky News is unlikely to manifest itself in full control over editorial output and consider that the exercise of influence is likely to be more nuanced in practice. Such influence would be exercisable, for example, through changes to the Sky News budget, the strategic and commercial direction of the business, the mix of shows including how they are positioned and promoted, the appointment of editorial positions within Sky News or the clear expression of the views or expectations of members of the Murdoch family to editorial staff. Coordination of editorial outlook could arise in relation to select matters which may not, unlike Brexit or the outcome of a general election, be those subject to such intense scrutiny.
- 8.42 While the safeguards identified are likely to mean that the MFT could not attempt to exercise its increased control over Sky News in an overt way (eg requiring Sky News 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 their cumulative effects would not be sufficient to allay concerns.
- 8.43 Therefore, we provisionally find that the constraints set out above, whether considered individually or cumulatively, would not act to significantly limit the increased control the MFT would be able to exercise over Sky and Sky News following the Transaction, as set out in paragraph 7.94. This is notwithstanding the fact that the MFT might take into account these constraints in making decisions about how they will exercise their control over Sky and Sky News after the Transaction.

Conclusion on the change in the actual extent of control post Transaction

- 8.44 In the context of the extent of control currently exercised and exercisable by the MFT over Sky and Sky News, we have provisionally found that the

²³² [Fox initial submission](#), paragraph 4.34. Emphasis added by Fox.

Transaction will significantly increase the extent of control the MFT is able to exercise over Sky and Sky News. We consider that the loss of the current Sky board and its independent directors, in particular, will increase the ability of the MFT to exercise control over Sky and Sky News. We have considered the extent to which internal plurality including the constraints or safeguards proposed by the Parties (including the Fox board resolution, the culture of the Sky News newsroom, audience expectations and the Broadcasting Code) would act to limit this increased exercisable control. We have provisionally concluded in relation to each separately and taken all together cumulatively that they would not do so.

8.45 We therefore provisionally find that, although the MFT will not have full ownership of Sky following the Transaction, the significant extent of the increased control it will be able to exercise is sufficient to give rise to concerns that, as a result of the Transaction, 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. We consider that these types of alignment have 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.

8.46 We therefore consider that in carrying out our assessment of the impact of the Transaction in terms of the theories of harm outlined in chapter 6, it is necessary to analyse whether the combination of Sky News and News Corp is likely to lead to harm in terms of the media plurality consideration.

9. UK news media landscape

9.1 In considering the current level of media plurality and the impact of the Transaction, we have had regard to the way in which different types of news providers operate, and recent changes to the way that news is consumed, including the growth of online news provision. This chapter sets out this key context which is relevant to our subsequent analysis of measures of plurality, focusing primarily on changes in online news provision. More detailed information on the use of different channels and news providers is contained in chapter 10. Further detail on online news provision is contained in Appendix E.

Characteristics of different types of news providers

9.2 Consumers can source their news from four main platforms: TV, printed newspapers, radio, and online. These platforms are subject to different regulatory requirements, and tend to provide different types of content.

- 9.3 TV and radio news providers are required under the Broadcasting Code to present news with due accuracy and impartiality, which limits the extent to which they can promote opinions or take partisan positions. In contrast, newspapers are not subject to the same requirements, and as a result they are free to take a more overt partisan or political or judgmental position. Ofcom's NCS indicates that consumers understand this distinction, at least in broad terms. For example, they tend to rate broadcasters higher than newspapers on the questions of whether a particular source is 'accurate and reliable' or 'impartial and unbiased' (although there are significant differences between providers).²³³
- 9.4 Online news providers are also not subject to the same requirements as TV and radio news providers.²³⁴ We recognise that consumers may understand the distinction between TV/radio news and newspapers, and have certain expectations of different news brands (for example, the extent to which these brands can be trusted), but these expectations may be challenged as more news is consumed online and via intermediaries. We note that providers of news such as Sky have stated that they have a unified approach across both TV and online and apply the same editorial guidelines across both platforms.²³⁵

Relative importance of different types of news providers

- 9.5 The structure of the news market is complex, but at a high level it is useful to distinguish between the 'wholesale' production of content and the 'retail' distribution of that content to end users through various platforms. Traditional news providers are involved at both stages of the chain, but some organisations such as online intermediaries are only involved at the retail stage. Some radio broadcasters source a large share of their news content from other organisations and focus on the retail stage, although they keep a level of editorial control on the content.
- 9.6 The relative importance of these four platforms is changing, driven primarily by the growth in use of online channels. We have seen an increase in access to the internet (from 60% to 88% over the last 12 years), and rapid growth in smartphone take up (from 51% to 76% over the past five years).²³⁶
- 9.7 However, while more people are using the internet, TV remains the most important source of news with newspapers still playing a significant role.

²³³ See paragraphs 11.37 to 11.39.

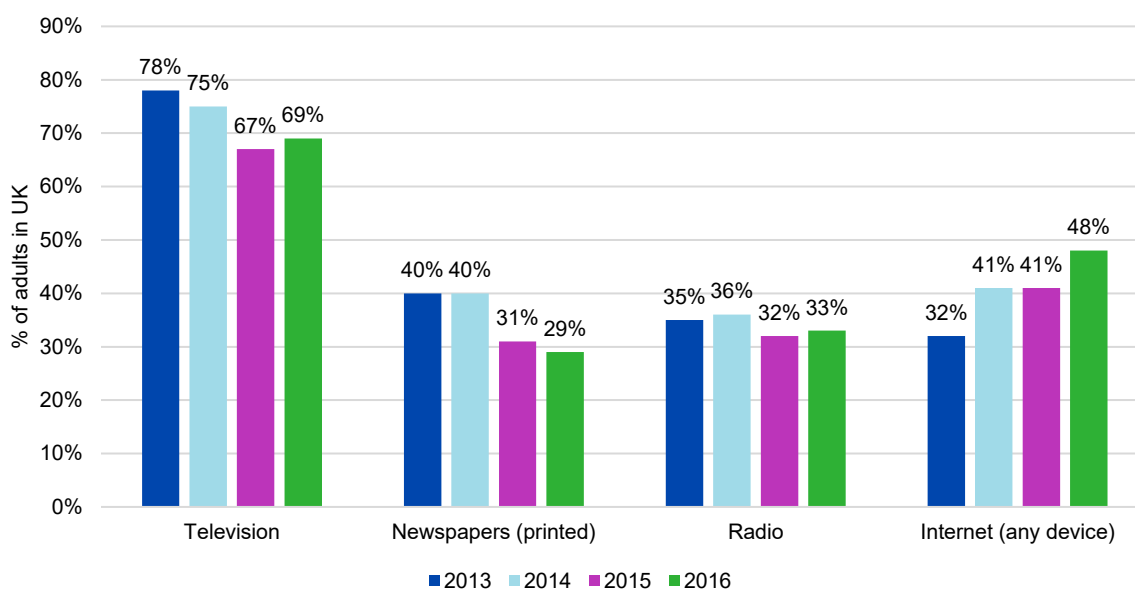
²³⁴ See paragraph 5.28.

²³⁵ [Summary of hearing with Sky](#), paragraph 40

²³⁶ Ofcom, [Communications Market Report 2017](#).

According to Ofcom's NCS, TV is used as a source of news by 69% of the population. Newspapers are also still used by nearly one third of adults as a source of news. In 2016, roughly half of the population consumed some of their news online (rising from 32% in 2013) (see Figure 9.1). The average weekly consumption of TV and radio news has been relatively stable in recent years, whilst daily national newspaper readership has declined. Further details on trends in consumption is included in chapter 10.

Figure 9.1: Use of four main platforms for news nowadays (2013 to 2016)



Source: Ofcom NCS 2016.
 Q3a/Q3aa Which of the following do you use for news nowadays?
 Base: All adults 16+ (2016: 2894; 2015: 2921; 2014: 2731; 2013: 2862).

Recent changes in business models

9.8 Ofcom has found that, despite the decline in TV news consumption, the revenues of TV broadcasters and their spending on news programming have been relatively resilient.²³⁷ TV broadcasters have all started to distribute content online, and we have seen no indication that their business models or their viability in news production is under threat. Similarly, the revenues of commercial radio stations have been relatively flat between 2010 and 2015.²³⁸

9.9 In contrast, newspapers are seeing their business models disrupted to a greater extent by the growth in online news. As the circulation of printed newspapers has dropped, so has their attractiveness to advertisers. In most cases, the increase in revenues from digital advertising has not offset the decline in revenues from the print editions. In total, Ofcom found that the

²³⁷ Ofcom Public Interest Report, paragraph 4.57.

²³⁸ Ofcom Public Interest Report, paragraph 4.59.

advertising revenues of national newspapers dropped from nearly £1.4 billion in 2011 to approximately £0.8 billion in 2016.²³⁹

- 9.10 Newspapers have responded to these pressures in various ways. While some newspapers have sought to grow subscription revenues from their online editions (for example, The Times), others have dropped their paywalls to maximise their online audience and their digital advertising revenues (for example, The Sun). Some brands have adopted mixed models that rely on partial paywalls or voluntary donations. Most newspapers have also sought to reduce costs through a combination of consolidation, staff reductions, and reductions in the size of their editions.

Development of different forms of online news provision

- 9.11 Within the overall growth in consumption of news online, it is important to distinguish between different types of online news providers. The companies active in the distribution of news online fall into three main categories:
- (a) traditional news providers (ie most broadcasters and newspapers publishers), who have started to distribute their content online as well as on traditional platforms;
 - (b) online-only providers (eg BuzzFeed, HuffPost UK, and The Independent), who only distribute their content online;²⁴⁰ and
 - (c) intermediaries, who do not produce their own content but distribute content from other sources.
- 9.12 Traditional news providers provide the bulk of the news content consumed online (see Appendix E). They distribute this content on their own websites and apps as well as through intermediaries. Traditionally, broadcasters have used more videos and podcasts online while newspapers have used more text. However, this distinction is becoming increasingly blurred and most news providers now use a variety of formats.
- 9.13 Online-only providers have been successful at growing their audiences online and generating engagement on social media. However, they differ from traditional news providers in three main ways:
- (a) **scale**: online-only providers have much more limited resources than traditional news providers (see Appendix H);

²³⁹ Ofcom Public Interest Report, Figure 4.8.

²⁴⁰ The Independent stopped its print edition in 2016 and as such we refer to it as an 'online-only' provider.

- (b) **focus:** In most cases online-only providers have more focused editorial priorities and narrower sets of target audiences. For example, BuzzFeed told us that it saw itself as ‘a relatively small UK news organisation’ which tended to focus resources on covering stories that are not part of the ‘big media’ news agenda, or which will bring something distinctive to a big rolling story, as well as investigative journalism. BuzzFeed also added that it tends to focus on news that is likely to appeal to consumers under the age of 35.²⁴¹
- (c) **trust:** online-only providers tend to be trusted less compared to more established news providers. This is discussed further in chapter 11 (see, for example, 11.38).

9.14 The intermediaries are themselves a heterogenous group. Based on the NCS, the four most popular intermediaries for news consumption in the UK are Facebook, Twitter, Google, and YouTube.

- (a) Facebook and Twitter are social media sites which allow users to see news content from various sources. These sources can be, among others, news providers but also individual commentators, politicians and campaign groups. What a user sees on a social media site is determined to a large extent by their own choices in terms of which profiles and pages to follow and groups to join, the choices of the providers and authors in terms of what to post.²⁴² The algorithms play a role in ranking the content which is responsive to each individual user’s preferences and those preferences are largely informed by the activity of the user and the user’s friends on the platform and the sources and publishers they find the most meaningful and engaging. For example, Facebook automatically ranks the stories displayed on each user’s News Feed based on an algorithm designed to surface the content which is most responsive to individual preferences. This algorithm uses a number of ‘signals’ to assess the relevance of available posts including the identity of their publisher, their date of publication, and people’s engagement with the post. The algorithm displays posts from a users’ friends and preferred news providers, but also from unconnected publishers in its Explore Feed.
- (b) Google operates a search engine which allows users to discover web-based information, including news from various publishers by typing news-related search terms in the Google search bar. Google also operates the Google News interface, which automatically aggregates

²⁴¹ [Summary of hearing with BuzzFeed](#), paragraph 1

²⁴² We note that in the case of Twitter, text posted on the platform (Tweets) can also be promoted to a wider audience using Twitter’s advertising products.

news from providers for different topics. The NCS shows that, of the people who use the internet for news, 15% use the Google search engine for news, and 6% use Google News.²⁴³ The Google algorithm ranks results related to news based on signals specific to measuring the relevance of news articles. These news-specific signals include: 'freshness' (ie how recent and timely a given article is); measures of the site's overall quality with respect to news content; user activity (measures of user satisfaction with the results); and 'PageRank' (ie the number and quality of links that a page receives from other pages).²⁴⁴ The results may also take account of the user's location.

- (c) YouTube (which is owned by Google) could be described as operating a hybrid model, where users either search for videos on current affairs based on specific search terms, or choose to follow the channels of their preferred news providers or commentators.

Provisional conclusions on UK media landscape

9.15 This chapter has set out contextual issues that are important in our assessment of diversity in the following section. In particular, we have provisionally found:

- (a) TV and radio news providers are required to present news with due accuracy and impartiality, which limits the extent to which they can promote opinions or take partisan positions. Newspapers and online news providers are not subject to the same requirements;
- (b) TV remains the platform used by the highest proportion of adults as a source of news, being used by more than two thirds of the population. Newspapers are still used by nearly one third of adults as a source of news;
- (c) the proportion of adults using online news providers as a source of news is increasing, to nearly a half, although this varies significantly by age group. Newspapers have been disrupted by the growth of online news consumption, and have responded by developing their online new provision;
- (d) news providers online can be either traditional news organisations with an online presence, intermediaries, or online only news providers. Online

²⁴³ In 2016. See: [Ofcom- News Consumption in the UK: 2016](#), page 38.

²⁴⁴ Google told us that PageRank was less important for news related searched than for other searches.

only news providers tend to differ from other providers in terms of their scale, their focus, and the level of trust that their users have in them.

- 9.16 Overall, we observe that online news is changing the way users consume news. However, traditional news providers continue to produce the bulk of the news content that is consumed online, either directly or via intermediaries.

10. Assessment of diversity in the viewpoints that are available and consumed

- 10.1 This chapter considers whether the MFT's increased influence over Sky and Sky News as a result of the Transaction could lead to a reduction in the diversity of viewpoints (both in terms of the number of viewpoints, and the persons with control of those viewpoints) that are available to and consumed by audiences in the UK.
- 10.2 As set out in chapter 6, concerns about a reduction in diversity might arise if the increased control that the MFT will have over Sky following the Transaction means that the news and current affairs offerings operated by Sky and News Corp (including Sky News, Sky News Radio, The Sun, The Sun on Sunday, The Times, and The Sunday Times) could pursue more 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.
- 10.3 We have provisionally concluded in chapter 7 that the Transaction would materially increase the ability of MFT to control the news and current affairs content of Sky News. This could lead to a reduction in the diversity of the viewpoints consumed by the public as a result of the MFT's increased control of Sky and Sky News and its existing control over News Corp. In particular, we would have concerns that the Transaction could lead to a reduction in the diversity of viewpoints available to the public if:
- (a) a limited number of viewpoints are available to the public;
 - (b) the news and current affairs content provided by Sky News and News Corp reaches and is consumed by a significant proportion of the public; and/or
 - (c) Sky News and News Corp's customers are heavily reliant on Sky News and News Corp newspaper titles.

- 10.4 We have assessed the diversity of viewpoints in relation to the Transaction by considering availability, reach, and consumption of different news providers through the use of quantitative metrics and qualitative evidence. These metrics and evidence allow us to assess the scale of the potential loss of diversity by analysing the current position of Sky News and the News Corp newspaper titles, and the extent to which the MFT's increased control over Sky and Sky News following the Transaction would strengthen the MFT's position.
- 10.5 As explained in chapter 7, we acknowledge that the MFT will not have full control of Sky and News Corp following the Transaction. However, we consider that the extent of the increased control that the MFT will have over Sky and Sky News as a result of the Transaction means it is necessary to analyse whether the combination of Sky News and News Corp is likely to lead to harm in terms of our assessment of the diversity of the viewpoints that are available and consumed.
- 10.6 The chapter is structured as follows:
- (a) first, we consider how the Transaction is likely to affect the availability of different viewpoints;
 - (b) second, we set out evidence on the reach of different providers, and how the reach of Sky and News Corp might be affected by the Transaction;
 - (c) third, we consider the consumption of the Sky News and News Corp, including the share of reference metric;
 - (d) fourth, we consider the extent of multi-sourcing and whether this might mitigate concerns about a loss of the diversity of viewpoints;
 - (e) finally, we set out our provisional conclusions on the extent to which the MFT's increased control of Sky and Sky News as a result of the Transaction might lead to a loss of the diversity of the viewpoints available and consumed.
- 10.7 As set out in chapter 6, we have considerable discretion in construing the relevant audience that we consider appropriate for our assessment of the Transaction. In carrying out our assessment of the above points, we have started from assessing the impact of the Transaction on a UK audience for news and current affairs. We have also sought evidence²⁴⁵ and considered

²⁴⁵ See for example, paragraph 21 and footnote 27 of [our issues statement](#).

the impact of the Transaction on different audiences throughout the UK, including different age groups, social groups, and regions and local areas.

10.8 We note that the Ofcom Public Interest Report did not find that a particular subgroup would be significantly more affected as a result of the Transaction such that it would alter their overall recommendation.²⁴⁶ Furthermore, we did not receive substantive evidence that particular audiences would be affected by the Transaction more than others.

Availability

10.9 Availability of news is the first part of Ofcom’s measurement framework. We recognise that while identifying and understanding the range of news providers available is useful, counting the number of news providers gives us only limited insight for our plurality assessment. Measures of availability do not give us any insight into how news sources are consumed or can influence their users.

10.10 In its Public Interest Report, Ofcom considered the number and range of news providers available to consumers in the UK. It found that there is a large number of different news sources in total across the four media platforms, such that the Transaction would not result in a significant reduction in the absolute range or number of news providers.

10.11 Table 10.1 demonstrates the multi-platform scope of the news offering provided by different media enterprises at a retail level in the UK. This gives an indication of the range of voices currently operating in the market. It also shows that, while many providers operate across two platforms (typically online and newspapers, or online and broadcasting), only a small number operate across three platforms.

Table 10.1: Multiplatform scope of news offer provided by different news providers (UK retail level)

<i>News outlet</i>	<i>Television (broadcast/ online)</i>	<i>Radio (broadcast/ online)</i>	<i>Newspapers/ print</i>	<i>Online news*</i>
BBC	✓	✓		✓
Sky	✓			✓
Channel 4	✓			✓
Channel 5	✓			✓
ITV	✓			✓
DMGT			✓	✓
News UK		✓	✓	✓
Guardian Media			✓	✓
Trinity Mirror			✓	✓

²⁴⁶ [Ofcom Public Interest Report](#), paragraph 3.43.3.

Lebedev Foundation				✓	✓
Telegraph Media				✓	✓
Northern and Shell				✓	✓
Johnston Press				✓	✓
Nikkei				✓	✓
Global		✓			✓
Bauer		✓			✓
BuzzFeed					✓
HuffPost UK					✓
Vice	✓			✓	✓
The Parties and News Corp	✓		✓	✓	✓

* Dedicated news channel online, including digital extension of traditional news providers: website, social media, app.
Source: [Ofcom Public Interest Report](#), June 2017.

10.12 Ofcom noted some changes in the availability of news providers over recent years.²⁴⁷ The key points were:

- (a) the closure of the News of the World in 2011;
- (b) the opening and closing of New Day, a newspaper, in 2016;
- (c) The Independent and The Independent on Sunday ceased print publication in 2016 and moved online;
- (d) the launch of two newspapers: The Sun on Sunday in 2013 and The New European in 2016;
- (e) a net reduction of 26 newspapers on a local and regional level between 2012 and 2016; and
- (f) the introduction of online-only news providers, in particular BuzzFeed and Huffington Post.

10.13 Ofcom, Fox and third parties have all identified the availability of news online as a significant recent change. The growth of online news has increased the absolute number of news sources available to consumers for those with access to the internet. For example, comScore records 532 different online news and information providers.²⁴⁸

10.14 However, third parties also noted that the MFT (through Fox and News Corp) will be the only controller of news across all four platforms – TV, print newspapers, radio (both through direct provision via talkSPORT and through Sky’s provision of content to IRN) and online. These third parties have noted that the breadth of the merged entity’s offering will be unmatched, even by the BBC (which does not offer print newspaper titles).²⁴⁹

²⁴⁷ [Ofcom Public Interest Report](#), June 2017.

²⁴⁸ As at 13 December 2017. We note that the number has since increased and comScore has noted that the actual number of entities reported depends on the definitions the news providers (publishers) decide to represent their content in comScore data (Dictionary) and the Minimum Reporting Standards.

²⁴⁹ For example, Media Reform Coalition and Avaaz, [Submission to CMA on plurality](#), page 4.

- 10.15 Third parties have argued that challenging commercial conditions are leading to closures and downsizing among newspapers, citing the example of redundancies at Guardian Media Group (GMG), potentially further reducing availability in the future.²⁵⁰
- 10.16 Overall, we have provisionally found that a significant range of news sources are currently available, despite recent reductions in the numbers of newspaper titles available. There has been an increase in the number of online news providers, and in the ways in which news can be accessed online. We have found that the Transaction will not materially affect the availability of alternative viewpoints. However, we note that merely counting the number of news providers does not give us any insight into the reach of these providers, their level of consumption or their influence.

Reach

- 10.17 Reach measures the number of people who use a news source in a given time period for a minimum duration.²⁵¹ 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 shallow.²⁵² The fact that a provider has a large reach may not in itself mean that it has significant influence over the views of that group of consumers.²⁵³ However we consider that reach is a useful starting point for showing which consumers come into contact with particular providers.
- 10.18 We first set out evidence on measures of reach by platform, which use a number of different measurement techniques and as such are not directly comparable between platforms. We then summarise evidence on cross-platform reach based on Ofcom’s NCS, which allows a comparison across platforms.

²⁵⁰ [Ed Miliband et al submission](#), page 54.

²⁵¹ Minimum duration varies for different data sources and channels. Reach in relation to BARB is defined as the proportion of the BARB panel who has watched at least three minutes of news on TV in an average week. Reach in relation to NRS is defined as the average issue readership. Reach in relation to RAJAR is defined as the number of listeners to a station for at least five consecutive minutes within a 15-minute period. Reach in relation to comScore is defined as the percentage of the online population that visited the website or app. Source: Annex 3 of [Ofcom Public Interest Report](#), June 2017.

²⁵² For example, a TV user who has watched BBC One News for three minutes in a week will be counted as having been ‘reached’.

²⁵³ [David Elstein at roundtable discussion on media plurality](#), transcript page 7, line 23 and Matthew Horsman at [roundtable discussion on media plurality](#), transcript page 15, line 14.

Reach by platform

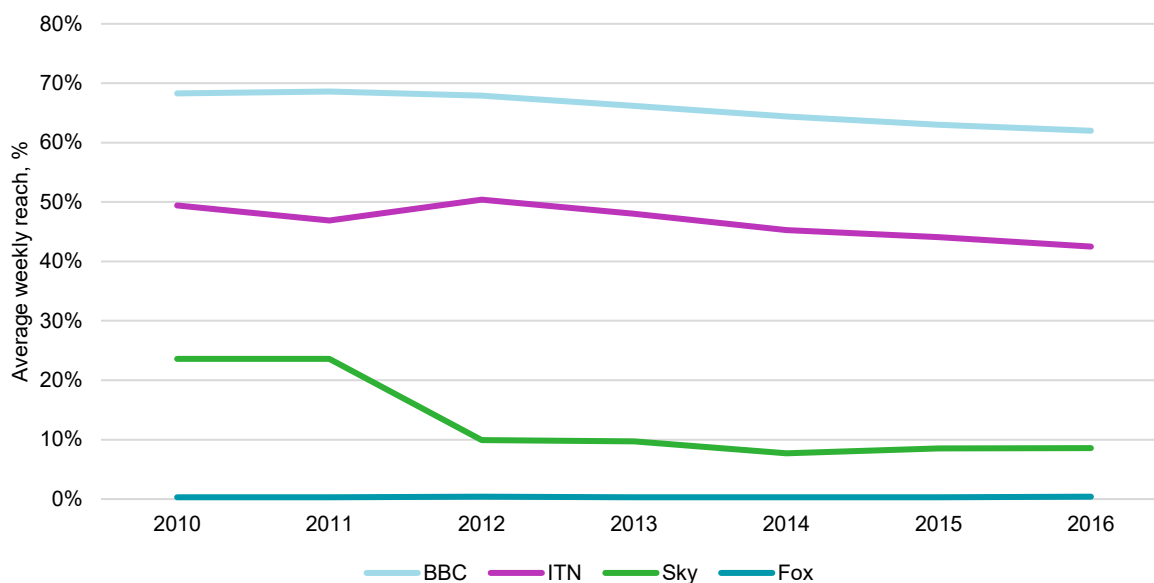
10.19 In our analysis we have used data from the Broadcasters' Audience Research Board (BARB), National Readership Survey (NRS), Radio Joint Audience Research (RAJAR) and comScore:

- (a) **BARB**: measures TV viewing from a panel who have meters installed on TVs and devices. It provides viewing by minute by individual. The key weakness of BARB data is that it is limited in its ability to capture TV viewing that does not happen on a TV – eg online viewing – although this is currently being addressed by BARB;
- (b) **NRS**: measures print newspaper readership, based on a survey of readers. The NRS is a recall based survey and may underreport certain user groups (although a correction is made for this). Longer run information from the NRS tends to be highly correlated with circulation figures;
- (c) **RAJAR**: measures radio listenership. It is based on a panel who complete diaries of listening activities. Listeners complete a diary based on 15-minute listening blocks. The measure may understate listening by light users given the reliance on completing a diary, and does not allow for breakdowns of listening by type of content;
- (d) **comScore**: comScore delivers online audience measurement across different devices (PC, tablet, mobile) and for different types of content (including page content, apps, video). comScore is endorsed by UKOM, the body that sets and governs the UK standard for the online industry. We have used comScore's MMX Multi-Platform data (this comprises of data from desktop, smartphone and tablet data sources).

10.20 We have not undertaken a detailed analysis of the methodology behind BARB, NRS and RAJAR data, noting that these are considered industry standards. Given that it is relatively new and has a complex methodology, we have considered the extent to which we can place weight on comScore data. We consider that, subject to certain caveats, comScore is a useful tool for measuring online activity. Full details of our assessment are included in Appendix E.

10.21 For TV broadcast news, BARB data suggests that the average weekly reach of major wholesale news providers has declined in the period 2010 to 2016. Sky's reach declined between 2011 and 2012 on this measure when it lost its role as wholesale supplier of news to Channel 5, as shown in Figure 10.1.

Figure 10.1: Average weekly reach of national/international news by wholesale television provider, UK, 2010 to 2016



Note: Adults 16+. Viewing to the BBC, ITN, and Sky wholesale groups is based on viewing to the national/international news genre, while viewing to Fox News is based on viewing to the channel as a whole. In February 2012, Channel 5 moved from Sky as its wholesale supply of news to ITN. This is reflected above (2011= Jan 2011- Jan 2012 and 2012= Feb 2012- Dec 2012 for Sky and ITN only).

Source: [Ofcom Public Interest Report](#) (based on BARB data).

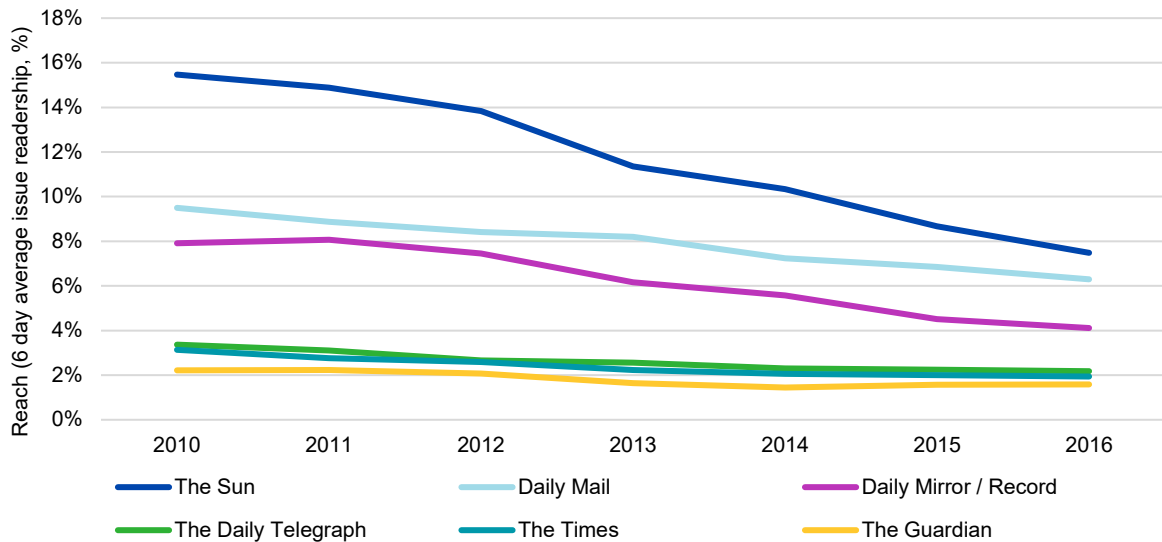
10.22 In relation to newspapers, the average reach of print newspapers has declined for all major print titles,²⁵⁴ including The Sun. This is shown in Figure 10.2. The Sun is the most widely read daily printed newspaper in Great Britain,²⁵⁵ with a reach of 7% (based on 6-day average issue readership).²⁵⁶

²⁵⁴ A respondent is classified as having read a newspaper if they spent more than two minutes reading/looking at it.

²⁵⁵ NRS data does not include Northern Ireland.

²⁵⁶ The NRS asks respondents if they have read a newspaper within its issue period (eg did someone read a daily paper in the last day?). Ofcom's analysis as reported is based on readership of UK-wide daily newspapers published six times a week (Public Interest Report A3.22 to A3.23).

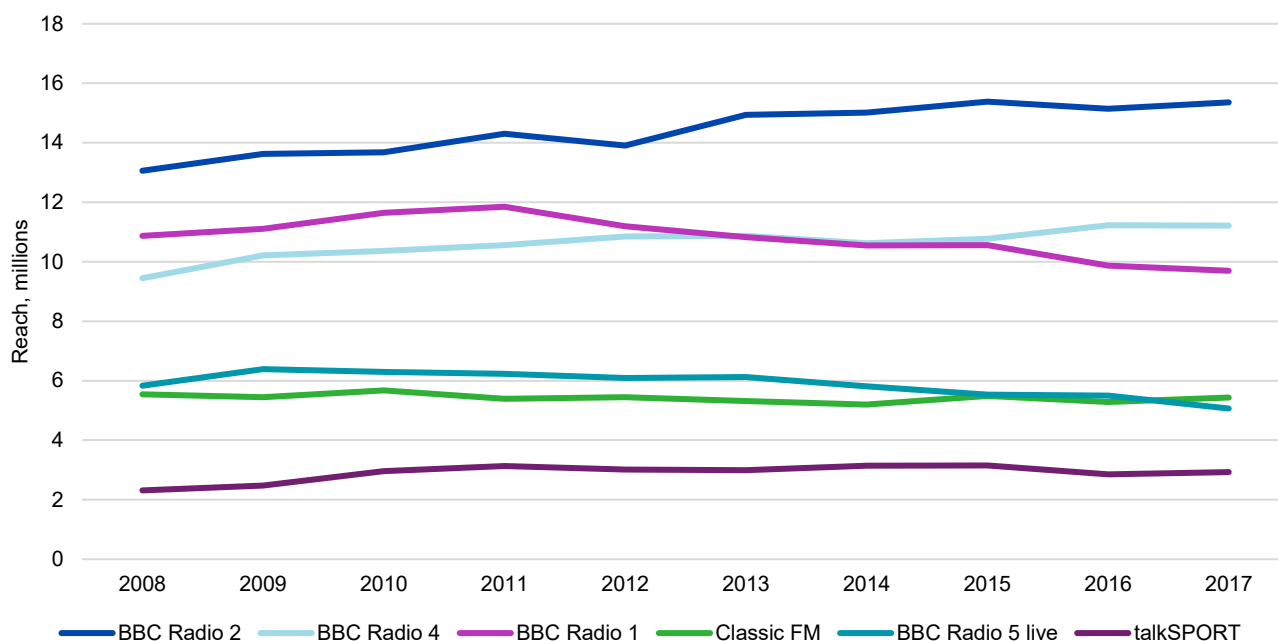
Figure 10.2: Print reach of the six largest national newspapers, 2010 to 2016



Source: [Ofcom Public Interest Report](#) (based on NRS data).

- 10.23 For radio news providers, we have assessed reach using RAJAR figures. RAJAR does not split listening by types of content, so the reach figures are for all content rather than specifically for news and current affairs. This limits the inferences that can be drawn about the reach of radio news.
- 10.24 Bearing in mind this caveat, four of the top five radio stations by overall reach are BBC stations, a position that has been constant since 2008 – see Figure 10.3. talkSPORT (part of the Wireless Group, owned by News Corp) reached between 2.3 and 3.2 million listeners over the period 2008 to 2017.

Figure 10.3: Reach of top five UK radio stations and talkSPORT,²⁵⁷ millions of listeners, 2008 to 2017²⁵⁸



Source: CMA analysis of [RAJAR quarterly listening data](#) (based on the quarter ending September of each year)

10.25 In relation to online news, Ofcom considered the reach of the five largest news websites in the UK (BBC websites, The Daily Mail website, The Sun website, Telegraph Media Group website and The Mirror website), finding these websites to have a reach of between 52% to 86% of the online population.²⁵⁹ We considered the reach of a wider range of news providers and considered data relating to the reach of content identified as news compared to the reach of the overall website.²⁶⁰ Figure 10.4 shows the average online reach of the news section of the major UK news providers (analysed at the level reported in Table 1 of Appendix E) for the period January to August 2017 (the hatched bars mean that data is only available at the level of the title).²⁶¹ The Sun and Sky News have a reach of roughly 20% each on this measure, and The Times has a reach of 7%.²⁶²

²⁵⁷ Note there are other radio stations with a wider reach than talkSPORT that are not included. talkSPORT is included as it is a News Corp owned station.

²⁵⁸ Based on the quarter ending September of each year.

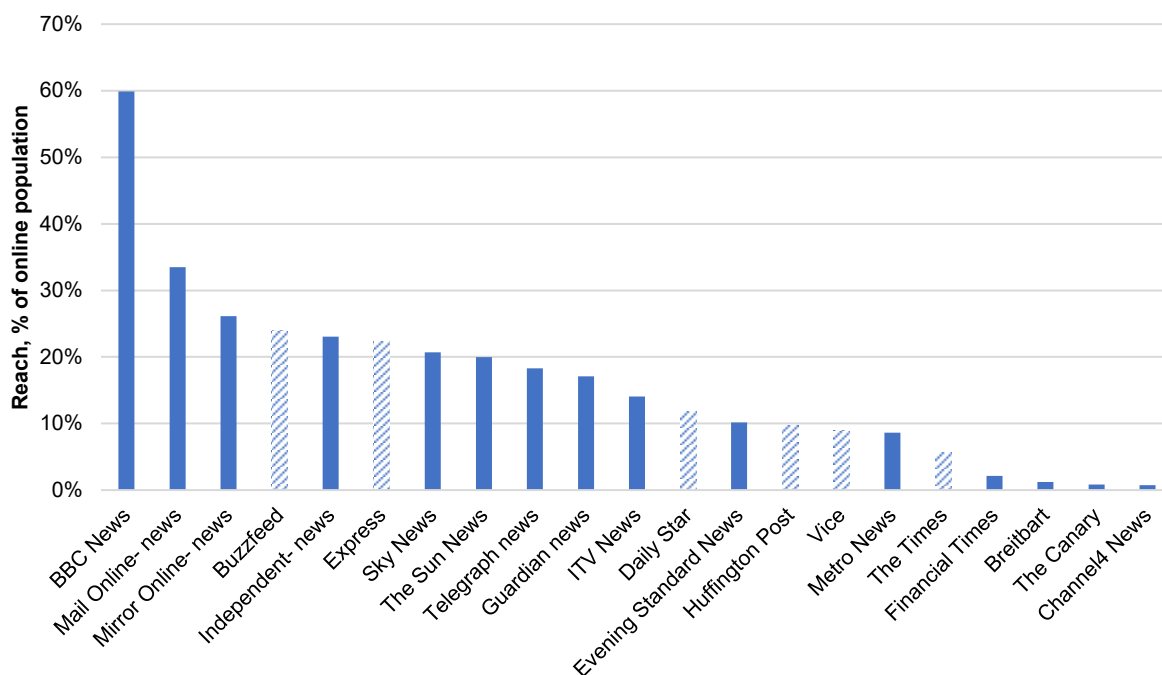
²⁵⁹ Ofcom considered only the top five news websites when using multiplatform data (ie those sites that are measured across desktop and mobile devices) as these had a comparable unification status (with the exception of the Telegraph Media Group where mobile data was not fully unified- see paragraph A3.19 of the [Ofcom Public Interest Report](#)). For further details on unification please see Appendix E.

²⁶⁰ Noting that the more granular level of information may not be fully unified or comparable, see Appendix E:

²⁶¹ We note that more recent comScore data is available but does not consider there have been material changes in terms of reach since August 2017.

²⁶² We note that the results are sensitive to the level of comScore data chosen- for example, The Sun Online (media title) had 29 million unique users in September 2017, a reach of 60%.

Figure 10.4: Online reach of selected news providers, January to August 2017



Source: CMA analysis of comScore MMX Multi-Platform.

Note: hatched bars mean that information is only available at the level of the title.

Data for each news title relates to the media title/channel/sub-channel specified in Table 1 of Appendix E

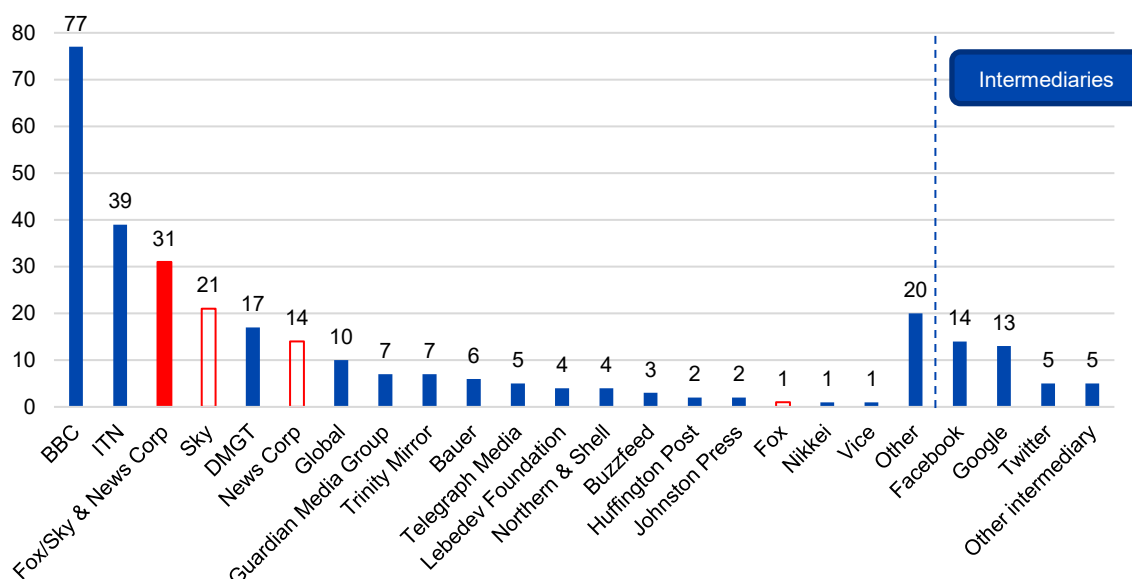
Cross-platform measures of reach

10.26 We used evidence from Ofcom’s NCS to assess the reach of news providers across-platforms.²⁶³ A news provider’s reach may be enhanced if that news provider uses multiple platforms (such as TV and online) with different users on each platform. Cross-platform reach therefore gives a more complete picture of reach compared to platform specific measures of reach.

10.27 Figure 10.5 shows the reach of news providers as measured by the Ofcom NCS. The largest wholesale provider by reach is the BBC, with a reach of 77%. The combined Fox, News Corp and Sky would have a reach of 31%, making it the third largest wholesale provider by reach behind the BBC and ITN. The combined Fox, News Corp and Sky would have a reach nearly double that of the fourth largest provider, DMGT. Only the top four providers will reach more than 10% of the UK population.

²⁶³ Note that, since reach is defined in different ways in the NCS and in the other sources referred to in the previous section, reach figures are not directly comparable between these different sources.

Figure 10.5: Wholesale cross-platform audience reach of providers used ‘nowadays’ for news: 2016



Source: Ofcom NCS 2016.

Base: All adults 16+ who use Television, Printed Newspapers, Radio, Internet, or Magazines for news nowadays (2659)

Notes: ‘Google’ contains all Google-named entities plus YouTube. ‘Other intermediary’ includes MSN, Yahoo, Feedly, Flipboard, News Now

Provisional conclusions on reach

10.28 Sky News and News Corp reach a significant proportion of the population:

- (a) Sky News has reach as a TV broadcaster of 9%. Its online reach is 20%;
- (b) The Sun has the largest reach of daily newspapers and an online reach of 20%, while The Times has the second largest reach among broadsheet newspapers;
- (c) talkSPORT reaches between 2.3 and 3.2 million listeners;
- (d) News Corp titles (on a cross-platform basis, based on Ofcom’s NCS) have the second largest reach of print providers at 14% (behind DMGT on 17%);
- (e) the overall combined reach of Sky News and News Corp is 31% based on Ofcom’s NCS, the third largest behind the BBC and ITN, but significantly ahead of the fourth largest (DMGT).

Consumption – platform specific measures

10.29 Having considered the reach of different news providers, we now set out evidence on levels of consumption. While reach gives an indication of the extent to which consumers access different news voices, we would expect the

extent to which consumers are influenced by a particular media source to depend on the frequency with which they access it and the length of time they spend reading or viewing it.

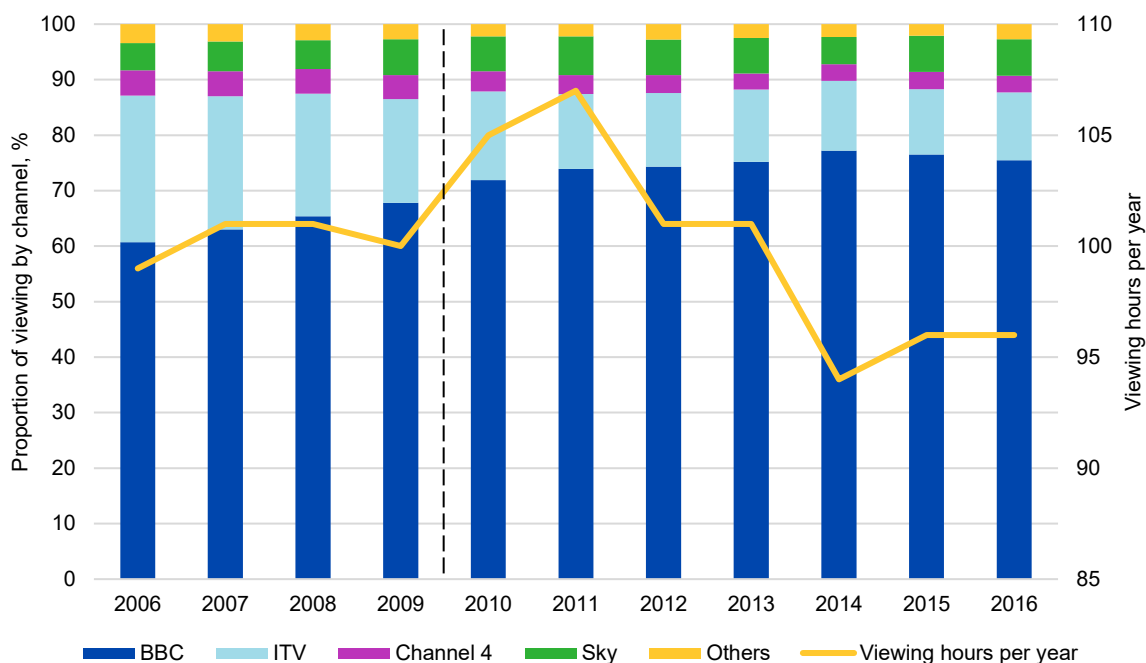
10.30 Consumption measures track the actual amount of time that a consumer has spent engaging with a particular news source (eg watching a news channel or reading a newspaper). As with reach, each platform uses a different measurement technique and as such measures of consumption are not directly comparable between platforms. Ofcom's share of reference metric allows a cross-platform measure of consumption and is discussed after this section.

10.31 In principle, we would expect consumption to be a better measure than reach of the likely impact of the news source on a consumer. However, measuring consumption is typically more difficult than measuring reach, so we need to be aware of the data limitations in interpreting the results.

Consumption of news on TV, newspapers and radio

10.32 Figure 10.6 shows that annual consumption of TV news based on BARB data has been steady at around 100 hours per year since 2006. However, during this time the BBC has been able to increase its share of TV news viewing from around 60% to nearly 80%. Most of this increase has been at the expense of ITV, which has seen its share of news consumption roughly halve over the period. Sky's share of news viewing has remained relatively constant. Sky accounted for 7% of news consumption in 2016 on this measure.

Figure 10.6: TV news consumption and share



Source: CMA/Communication Chambers analysis of [Ofcom PSB Annual Research Report 2017](#) (based on BARB data)

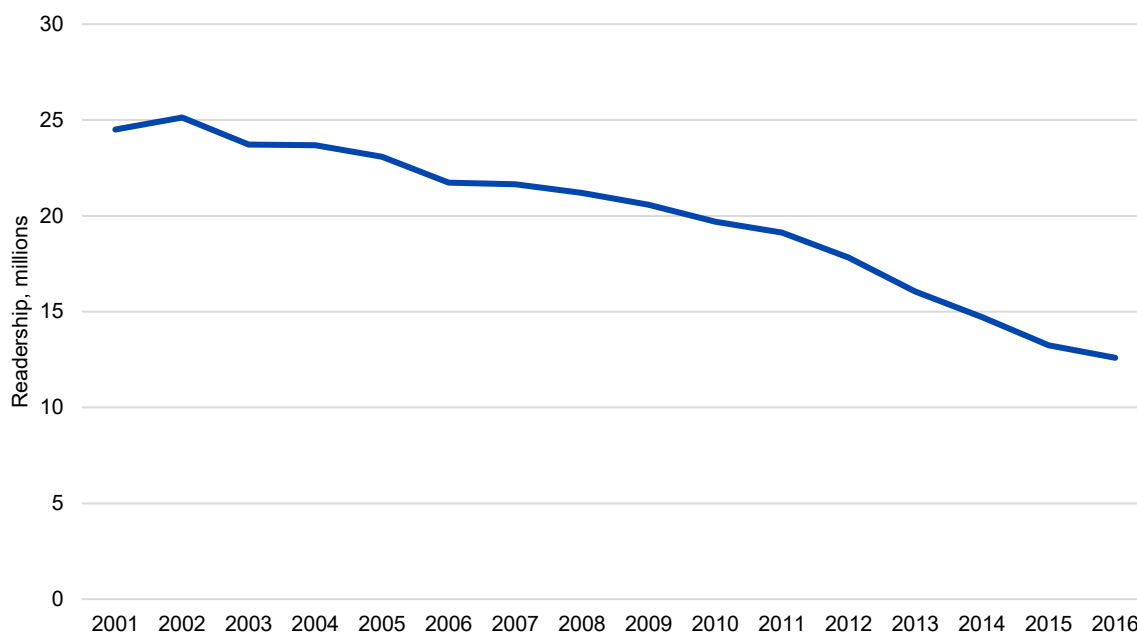
10.33 Sky noted that other terrestrial providers attract far larger audiences to their news services compared to Sky News. We note that Sky News does attract smaller audiences compared to the BBC and ITV in terms of reach (9% reach for Sky compared to 43% for ITN and 62% for the BBC). However as shown by Figure 10.6, on a consumption basis Sky News accounts for only a slightly smaller proportion of hours of news watched than ITV, and is significantly larger than Channel 4 and other channels. This reflects the fact that viewers of Sky News tend to access it more frequently or for longer periods, on average, than viewers of ITV and Channel 4 News. We also note that, while the BBC is the largest provider of TV news, Sky News is the only commercial provider of a 24-hour TV news service, and has been seen by third parties as a positive competitive force in the provision of news.²⁶⁴

10.34 Figure 10.7 shows that circulation of daily newspapers has fallen by around a half since 2001. We consider that using readership of newspapers is a preferable measure to circulation given that multiple people may read the same copy of a newspaper. NRS figures show that The Sun had an average daily readership of 3.5 million and The Times an average daily readership of 1.1 million.²⁶⁵ The Sun has the largest readership of all national daily newspapers, ahead of The Daily Mail's readership of 3.1 million.

²⁶⁴ See for example comments by Professor Suzanne Franks, [Transcript of the roundtable discussion on media plurality](#), page 69, line 21.

²⁶⁵ As at December 2017. Source: [Newsworks](#).

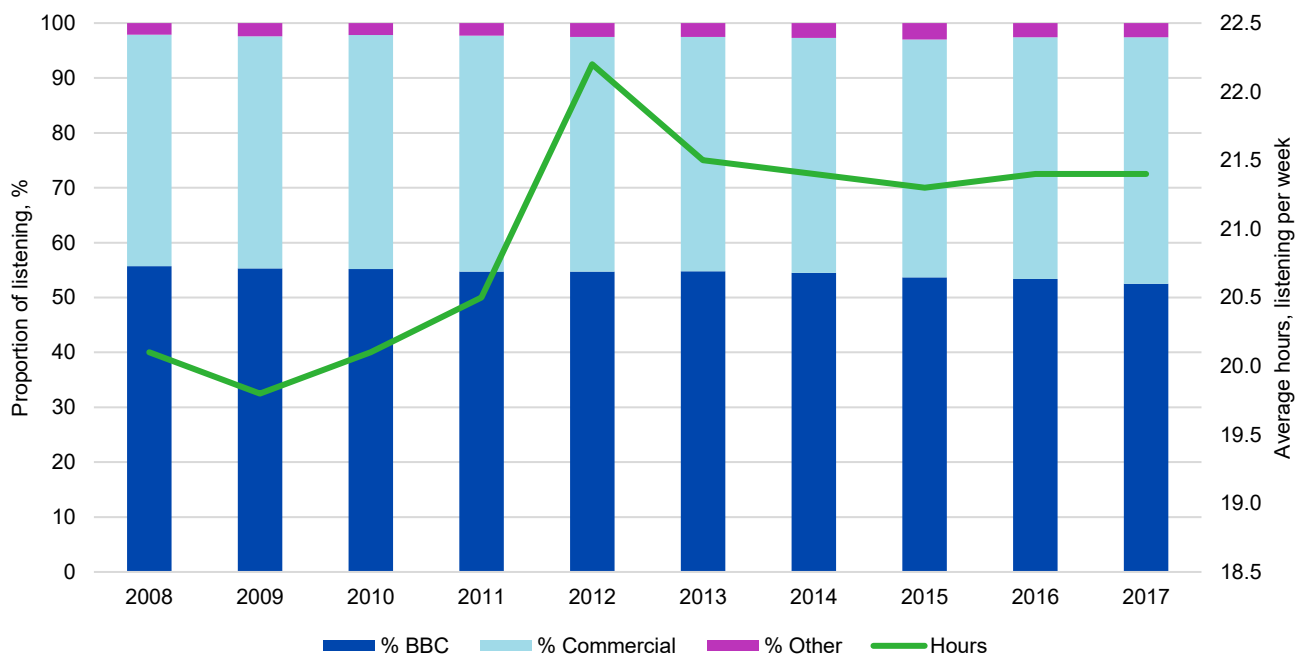
Figure 10.7: Daily national newspaper readership (millions)



Source: [Communications Chambers](#), based on NRS data (GB only)

10.35 In terms of consumption, Figure 10.8 shows that the average number of hours listening to the radio has remained relatively stable at around 20 hours per week, with approximately half of this time spent listening to BBC radio stations. We note that this is for all radio listening, as RAJAR does not produce figures for news consumption specifically.

Figure 10.8: Radio consumption and share



Source: CMA/Communication Chambers analysis of [Ofcom Communication Market Reports](#).

Consumption of news online

- 10.36 The 2016 NCS identified the websites and apps used for accessing news. The websites and apps of broadcasters were used by 63% of those using the internet for news (with the BBC and Sky News being particularly popular). 31% of the population using the internet for news used newspapers' websites or apps. Only 11% of the population using the internet for news used an online-only news site, with BuzzFeed and Huffington Post being the most popular.²⁶⁶ We consider that this demonstrates that traditional news providers (broadcasters and newspapers) retain a significant presence online.
- 10.37 According to the 2016 NCS, roughly half of the adult population consume some of their news online, but this encompasses a broad range of behaviours. In the first instance, it is useful to distinguish between direct and intermediated access to news online. Online news access content can be accessed directly from the websites or the apps of news providers, or can be accessed via an intermediary. Online news users accessing content directly appear to engage with online news and news providers in ways that are similar to their engagement with traditional platforms. Online news users also use intermediaries, with around 40% of online news users using social media sites and around 40% using search engines.²⁶⁷ These users tend to use a broader range of sources, although the precise extent of their multi-sourcing is difficult to measure. We have therefore carried out two pieces of analysis to better understand patterns of consumption of online news:
- (a) we have analysed data from comScore, (which is widely used within the media industry to track online consumption) to understand consumption via direct access;
 - (b) we have gathered information directly from key intermediaries (Facebook, Google, YouTube and Twitter) to better understand consumption through these platforms.

comScore measures of online news consumption

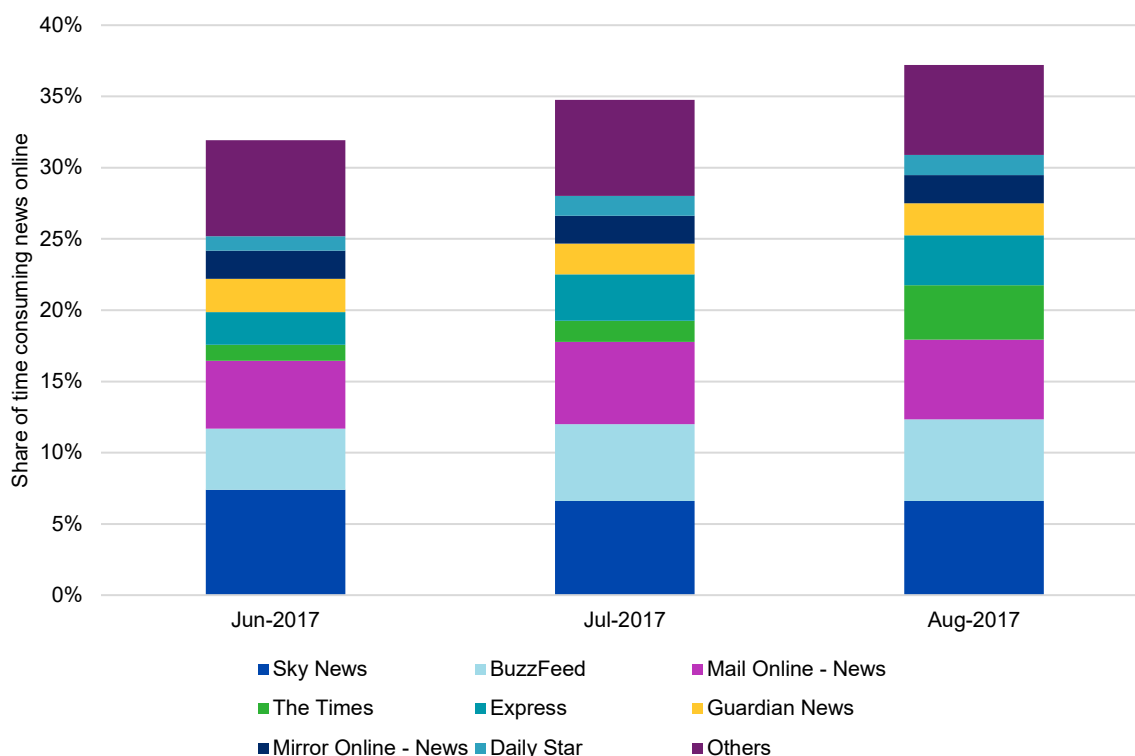
- 10.38 We considered shares of time spent online for the news providers (at the level listed in Table 1 of Appendix E). In August 2017, BBC News accounted for approximately 60% of news consumption online (measured by time spent for the 20 providers listed in Table 1 of Appendix E). Figure 10.9 shows the shares of other news providers (provided their share exceeds 1%). Based on this metric, Sky News has the largest share of consumption online behind the

²⁶⁶ Ofcom, [News consumption in the UK: 2016](#), page 38.

²⁶⁷ Ofcom, [News consumption in the UK: 2016](#), page 35.

BBC News, followed by The Mail Online, BuzzFeed and The Times. The relatively strong performance of Sky News on this metric is driven by the fact that users tend to use Sky News' services for longer periods of time compared to competitors (around 20 minutes per month, compared to around 10 to 15 minutes per month for titles such as The Times,²⁶⁸ The Daily Mail, and The Guardian, and around five minutes per month for The Sun).

Figure 10.9: share of time spent consuming news online



Source: CMA analysis of comScore MMX Multi-platform.

Notes: the remainder of the share of time consuming news online in each month is attributable to BBC News.

Data for each news title relates to the media title/channel/sub-channel specified in Table 1 of Appendix E.

The CMA notes that more recent comScore data is available but does not consider there have been material changes in terms of consumption since August 2017.

Consumption on intermediaries

10.39 We attempted to measure the consumption of different news sources on the four largest intermediaries: Facebook, Google, YouTube (owned by Google) and Twitter.²⁶⁹ Measuring consumption on intermediaries is difficult because intermediaries distribute news in different ways and collect different metrics of consumption. For this reason, we present a summary of results separately for the four most popular intermediaries for news: Facebook, Google (including YouTube), and Twitter. Full results are reported in Appendix E.

²⁶⁸ We note that the monthly usage of the Times increased significantly from August 2017, due to the inclusion of the Times mobile app under the TIMES.CO.UK channel.

²⁶⁹ As measured by the NCS

- (a) **Facebook:** we considered the number of followers that news providers have, the number of click throughs on links by different news providers, and the numbers of likes and shares that different news providers have. Overall, these different metrics provide a complex picture of the relative weight of news providers on Facebook. [X] has the largest audience measured by followers, but [X]. [X] is particularly successful in inducing its followers to click on its posts, whereas its performance in terms of other engagement metrics (likes and shares) is similar to that of other tabloid providers. [X] has a relatively large audience, but attracts low levels of click throughs and engagement. [X] plays a relatively minor role in news diffusion on Facebook. This might be because most of [X], or because its audience does not use Facebook to a significant extent.
- (b) **Google:** a long tail of small news providers contribute a significant share of the links displayed in a sample of Google search results in response to certain news related searches (such as 'Brexit', 'election', 'Grenfell fire', etc). However, the most significant contributors are mostly traditional, UK-based news providers. Sky News and The Sun contribute between [X] of the links displayed in the sample of Google search results for these searches. This is broadly in line with the cross-platform shares of reference of these news sources.
- (c) **YouTube:** Of the YouTube channels we identified (and over the period from 1 January 2017 to 22 October 2017), [X] has the largest number of views but is followed closely by [X] and [X]. [X] has a share of [X] of views in the sample of 32 news providers channels we requested data for. [X] also has a significant number of views in the UK (corresponding to [X] of views in the sample). Newspaper publishers attract lower number of views than broadcasters, with the exception of [X].²⁷⁰
- (d) **Twitter:** We have gathered information on the number of impressions and retweets of Twitter posts related to certain news topics using Brandwatch. This analysis indicates that while some individuals manage to achieve significant levels of engagement for the news content they post on Twitter, news providers are still the most widely read contributors on the platform. Broadcasters and broadsheet publishers appear to do particularly well, and Sky News has a significant presence on Twitter relative to certain other news sources.

10.40 In summary, Sky News has a large number of followers on Facebook, although it draws relatively low levels of engagement compared with some

²⁷⁰ [X].

other news sources. It was one of the most viewed channels over the period 1 January 2017 to 22 October 2017 on YouTube (out of a selection of YouTube channels we identified), constituting [] of views of these channels. Sky News also has a significant presence on Twitter when measured by number of impressions.

- 10.41 We note that the current and future performance of news providers via intermediaries is to some extent driven by the algorithms used by the intermediaries to choose what users will see. Changes in these algorithms may increase, or reduce, the number of people using a particular news source. For example, Facebook has recently stated that it will make changes so that its users see more content from friends and family and less public content (such as from media organisations).²⁷¹
- 10.42 However, there is no evidence that these algorithms favour traditional news providers at the expense of new entrants. The data presented in Appendix E indicates that online-only providers perform relatively well on intermediaries. One independent study also indicates that Google News tend to direct a significant amount of traffic to small news providers.²⁷²

Provisional conclusions on platform-specific measures of consumption

- 10.43 On each platform-specific measure of consumption, a significant proportion of the news consumed in the UK comes from either Sky News or News Corp:
- (a) Sky News has the third highest level of consumption on TV, behind the BBC and slightly less than ITV news,
 - (b) The Sun newspaper has the highest daily readership,
 - (c) The Sky News website is the second largest news website in the UK in terms of time spent on news websites, and,
 - (d) The Sun and Sky News do relatively well in terms of engagement and presence on various intermediaries.

Cross-platform measures of consumption – share of reference

- 10.44 This section focuses on cross-platform measures of consumption, and in particular Ofcom's share of reference metric based on the NCS:

²⁷¹ See: [News Feed FYI](#), Facebook, 11 January 2018

²⁷² Athey, Susan and Mobius, Mark, *The impact of news aggregators on internet news consumption: the case of localization*, January 11, 2017 | Working Paper No. 3353.

- (a) we first describe the basis for Ofcom's approach, and set out third party views on the appropriateness of the share of reference metric as a measure of plurality;
- (b) second, we summarise Ofcom's phase 1 findings in relation to the share of reference of Fox and News Corp, and of other news providers; and
- (c) third, we discuss sensitivity adjustments that might be made to Ofcom's results to reflect different points put to us by Fox and Sky, and by third parties.

Ofcom's share of reference approach

10.45 Ofcom developed its share of reference metric to assess cross-platform consumption. The share of reference metric defines a 'common currency' of news consumption across different platforms.

10.46 Share of reference is calculated by asking people which news sources²⁷³ they use and the frequency with which they use them. Each reference is weighted according to frequency of use, and summed to create a total number of news references. The share of each news outlet can then be calculated based on the total share of references.

10.47 Although there are some criticisms that can be made about Ofcom's approach, discussed in more detail below, we note that:

- (a) the methodology has been subject to extensive public consultation by Ofcom as part of establishing its measurement framework. This consultation was carried out before the start of the Inquiry and allowed Ofcom to take account of a range of views before deciding on its approach;
- (b) while imperfect, the share of reference approach is recognised as the best available methodology of comparing news consumption across platforms;²⁷⁴

²⁷³ News is not formally defined in the NCS survey. In the introduction to the survey respondents are told 'By news I mean news and current affairs in [your region/Wales/Scotland/Northern Ireland], across the UK and from around the world.'

²⁷⁴ We held a roundtable discussion on media plurality involving media experts. Attendees recognised the Ofcom approach as the best available approach, for example, Matthew Horsman noted that the share of reference was an attempt to move towards a quantifiable basis for looking at relative engagement. See [transcript of the roundtable discussion on media plurality](#), line 15, page 16.

- (c) the NCS asks users about use of both national and regional/local news sources, and the share of reference takes account of consumption of all these news providers.

10.48 For these reasons, we agree with Ofcom that the share of reference methodology should form a basis for considering the impact of the Transaction on consumption. However, we note the following in interpreting the share of reference:

- (a) a range of different assumptions are made in calculating the share of reference, and it may be appropriate to undertake sensitivity analysis to understand how these assumptions affect the share of reference;
- (b) shares of reference in a plurality assessment should not necessarily be interpreted in the same way as market shares in a competition assessment. We note that the shares of reference of established news providers can be relatively low;²⁷⁵
- (c) finally, share of reference should not be considered in isolation, but alongside the platform specific measures of reach and consumption, as well as alongside measures of impact and influence. Measures such as share of reference are an important part of assessing plurality, and can inform this judgement but are not in themselves sufficient.

Ofcom's phase 1 estimates of share of reference

10.49 In its Public Interest Report, Ofcom noted that the Parties and News Corp would have a combined wholesale share of reference of around 10% based on the results of the 2016 NCS. We have confirmed Ofcom's calculations and

²⁷⁵ The [Leveson Report](#) (page 1470) supports this statement:

'The argument for mechanically applied fixed caps or limits does not seem to me to be made out. Given the importance of having both public consensus on what constitutes sufficient plurality and sufficient clarity in the market to encourage investment, it would be sensible for Ofcom to carry out a consultative process designed to identify indicative levels of the various metrics that they are proposing to use that would give rise to plurality concerns. I am neither qualified, nor required, to give my own view on what such levels should be, and I have no intention of doing so. I do, however, accept that the importance of plurality of news and current affairs provision is a qualitatively different issue to those arising from general competition concerns. **I therefore recommend that the levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns.**' (emphasis added).

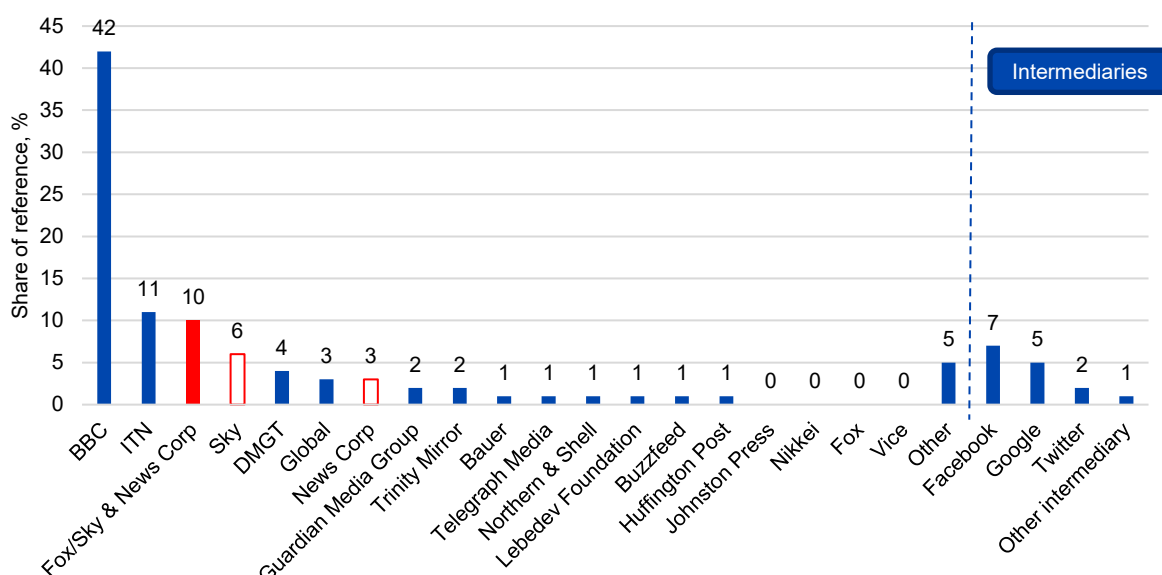
We note the recommendation of the Leveson Inquiry that levels of influence that would give rise to concerns in relation plurality are lower than those levels of concentration giving rise to competition concerns.

note that the share of reference of Sky News and News Corp will round up to 10% (over 6% for Sky and over 3% for News Corp).^{276,277}

10.50 We note that the combination of a share of reference of Sky News at over 6% and News Corp of over 3% is not an insignificant increment in terms of share of reference and media plurality. The MFT will be increasing its control over Sky News which has a share of reference of 6%, significantly larger than established news providers such as DMGT, GMG and Trinity Mirror.²⁷⁸

10.51 As shown in Figure 10.10, Sky currently has the third largest share of reference at both retail and wholesale level, with a share of reference of over 6% on a wholesale basis. The BBC remains significantly larger than all other news providers with a 42% share of reference.

Figure 10.10: Wholesale share of reference following the proposed Transaction, 2016



Base: All who use a news source nowadays (2,583).
Source: [Ofcom Public Interest Report](#).

10.52 We have also considered the nature of the remaining news providers post Transaction.

10.53 First, we consider the split between consumption across the four platforms using the share of reference of individual titles for the largest wholesale providers of news. We note that, combined, Sky and News Corp are the only

²⁷⁶ With the share of reference of Fox in 2016 being negligible. We note that Fox News no longer broadcasts in the UK, although STAR, another Fox channel still does.

²⁷⁷ We have calculated slightly different shares of reference as Ofcom uses a larger number of sources in its calculation (in particular, including news sources when the respondent selected 'other'). The differences were not material.

²⁷⁸ We also note that the Transaction will specifically increase the control of Fox and the MFT over Sky, which has a share of reference of 6%.

providers with a presence across all four news platforms (TV, radio, print newspapers and online) meaning that the MFT is the only person with control of media enterprises with a presence across all four news platforms:

- (a) **BBC:** Ofcom's Public Interest Report states that the BBC has a 42% share of reference. We estimate that this is made of a share of reference of 16% for BBC One, 11% for BBC Radio stations, 9% for the BBC website and the remainder coming from other BBC channels.
- (b) **ITN:** Ofcom's Public Interest Report states that ITN has a 11% share of reference. The majority of this is from ITV (8%), with the rest coming from Channel 4 and Channel 5 TV. We estimate that only a negligible contribution of its share of reference comes from online news (provided through Channel 4 and ITV websites).
- (c) **Sky and News Corp:** Ofcom's Public Interest Report states that Sky News has a share of reference of 6% and News Corp 3%.²⁷⁹ We estimate that Sky News TV's share of reference is 4% while the website's share is 2%. We estimate that News Corp's share of reference is predominantly derived from its newspaper readership, with online usage adding a negligible contribution to News Corp's share of reference.
- (d) **DMGT:** Ofcom's Public Interest Report states that DMGT has a share of reference of 4%. We estimate that approximately 3% of this is from use of the Daily Mail brands, evenly split between The Daily Mail website and the print version. The remainder is made up of usage of The Metro print edition and Metro website.

10.54 Fox and Sky have submitted that a 10% share of reference for Sky News and News Corp (compared with Sky News's pre-existing 6% share of reference) does not demonstrate a material share or increase in the share of reference. We do not agree. The MFT's control of Sky News and News Corp means that it controls a group of assets that taken together comprises one of the three largest news providers in the UK. The combined share of reference of Sky News and News Corp would be significantly larger than that of the next largest non-intermediary provider, DMGT (with a 4% share of reference) and the long tail of smaller providers.²⁸⁰ By increasing the MFT's control over Sky News, the Transaction increases this asymmetry because, combined, Sky

²⁷⁹ The 10% combined of reference is due to rounding.

²⁸⁰ We note that some intermediaries have relatively high shares of reference (for example, Facebook has a share of reference of 7%, higher than that of DMGT). We have noted previously that intermediaries do not produce their own content but distribute content from other sources, and as such our analysis focusses on non-intermediaries. Our analysis of consumption on intermediaries shows that The Sun and Sky News do relatively well in terms of engagement and presence on various intermediaries (see paragraph 10.39 onwards).

News and News Corp represent a larger news provider controlled by the MFT in third position behind the BBC and ITN.²⁸¹ Furthermore, Sky News and News Corp have a position across all four platforms, which, when combined and taking account of their size in terms of reach and consumption, is not matched by any other news provider.

- 10.55 We considered the position of the other two larger providers, the BBC and ITN. We do not consider that the wholesale shares of reference for the BBC and ITN are directly comparable to that of Sky News and News Corp, for the reasons set out below.
- 10.56 The BBC's share of reference is significantly larger than the shares of reference of other wholesale providers of news. However, the BBC has a distinct position in the provision of news in the UK, and has a distinct funding and governance model. As a public service organisation, it has five public purposes set out by the Royal Charter and Agreement, one of which is 'to provide impartial news and information to help people understand and engage with the world around them.'²⁸² The BBC explained to us that while it considered that it operates in the competitive market as regulated by Ofcom, it is not driven by commercial imperatives and sees its business as fulfilling its public purpose and Charter. A key issue to the BBC is understanding how its audience scores it on impartiality, accuracy and trust given the BBC's Charter.²⁸³ We are therefore conscious that its 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 and mitigate or moderate the influence of other news providers and the controllers of those other news providers.
- 10.57 In relation to ITN, we note two important distinctions compared to other wholesale providers of news. First, ITN's customers retain some degree of editorial control, and second, in some instances ITN's customers produce their own news content:²⁸⁴
- (a) Ofcom assessed news content on ITV, Channel 4 and Channel 5 to have been provided at a wholesale level by ITN. Ofcom has made the distinction between retail news provision (an individual title or brand of each source providing content to a viewer) and wholesale provision (the

²⁸¹ If ITN's share of reference were split between ITV, Channel 4 and Channel 5, Sky and News Corp would move to second position- see paragraph 10.58.

²⁸² See: [Inside the BBC: Public Purposes](#).

²⁸³ [Transcript of hearing with the BBC](#), page 19 from line 10 to 25.

²⁸⁴ We have also noted in paragraph 10.53 that ITN is mainly focused on provision of TV news, and derives only a small share of reference from the provision of online news.

supply and production of news for a retail source).²⁸⁵ However, evidence we have obtained indicates that there is a degree of editorial control held by the customers of ITN (ITV, Channel 4 and Channel 5) and a degree of differentiation in the news services provided by these channels;²⁸⁶

(b) furthermore, ITV and Channel 5 have also told us that they produce their own news and current affairs content (for example, ITV produces Good Morning Britain,²⁸⁷ its daily morning news and current affairs programme) or use other production companies to produce content (Channel 5 stated that it used Princess Productions to produce some current affairs content).

10.58 Given the above, it is reasonable to consider splitting out ITN at the wholesale level. Given that ITN's wholesale share of reference is 11% and Sky News and News Corp's combined share of reference is 10%, the consequence of reallocating wholesale share of reference is that Sky News and News Corp combined would represent the second largest wholesale provider of news by share of reference.

10.59 We also note the presence of intermediaries, some of whom have relatively high shares of reference (for example, Facebook has a share of reference of 7%). We have noted previously that intermediaries do not produce their own content but distribute content from other sources, and as such our analysis focuses on non-intermediaries. Our analysis of consumption on intermediaries shows that The Sun and Sky News do relatively well in terms of engagement and presence on various intermediaries (see paragraphs 10.28 and 10.40).

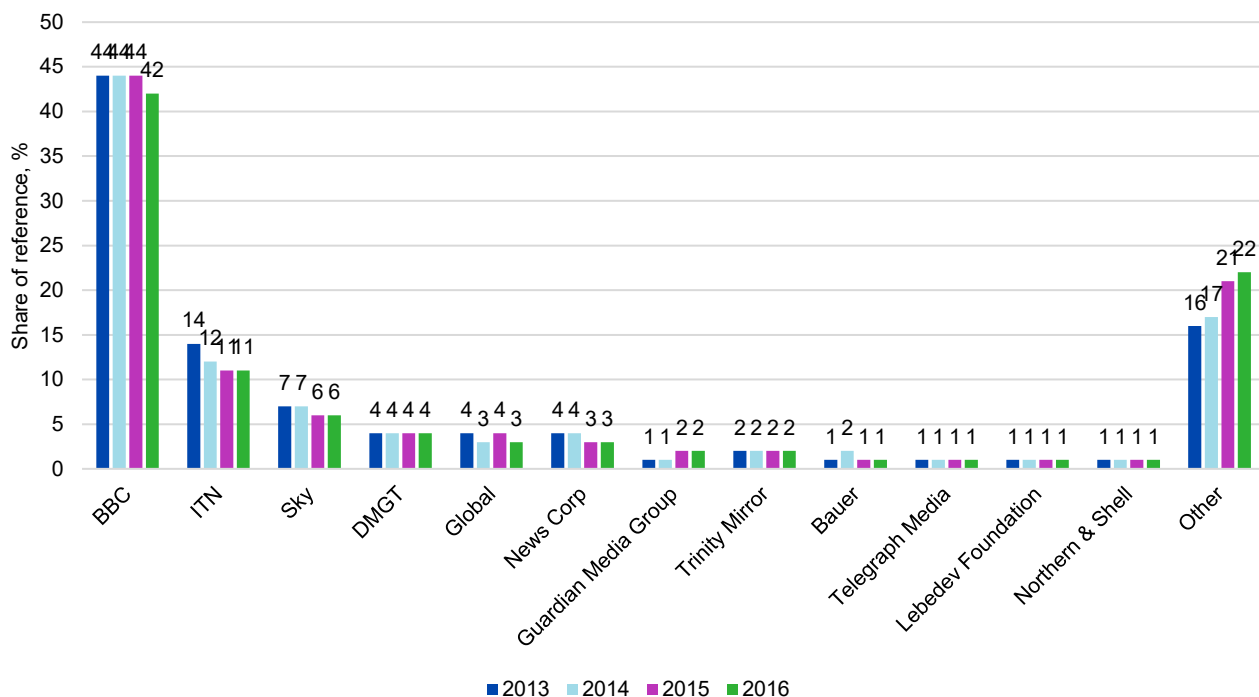
10.60 We have also considered trends in the share of reference over time. Ofcom's News Consumption in the UK report provides a comparison of shares of reference over four years (2013 to 2016) as demonstrated in Figure 10.11. This shows that over the past four years the wholesale shares of reference of major news providers have remained broadly constant (with the BBC's share of reference between 42 to 44%, Sky News' between 6 to 7% and New Corp's share of reference between 3 to 4%). While relative positions have not changed, the share of reference of some providers have seen larger changes in percentage terms - for example, ITN has lost over 20% of its share of reference since 2013.

²⁸⁵ Ofcom [Public Interest Report](#), footnote 7.

²⁸⁶ ITN told us that while some common costs are shared between the customers of ITN, each customer of ITN has its own newsgathering operation with dedicated staff to each channel, and each contract has a detailed editorial specification ([transcript of hearing with ITN, page 10 and 11](#)).

²⁸⁷ This production of news content by ITV may not be minor- [we note that Good Morning Britain \(for example\) has viewing figures of between 0.8 to 1.2 million](#).

Figure 10.11: Wholesale provider share of reference: 2013 to 2016



Source: Ofcom, NCS 2016.

10.61 We note that other individual providers' shares of reference remained relatively stable over the period 2013 to 2016. Over this period, there have not been any new entrants with a similar scale to Sky News or the News Corp titles. Newer news providers (who tend to be focused on online news provision) such as BuzzFeed have not managed to build up shares of references greater than 1% (see Figure 10.10). This suggests that it is unlikely that a significant alternative provider to Sky News and News Corp would emerge through organic growth in the short to medium term.

Sensitivity adjustments to share of reference

10.62 Third parties raised several criticisms of the share of reference calculations presented by Ofcom at phase 1:

- (a) the share of reference relies on data from the NCS in which recall of news sources used is required. Third parties argued this may understate the use of some news sources, particularly online news. We compared reach statistics from the NCS and compared to other industry measures (eg BARB) and found similar results for newspaper readership and TV viewing, but different results for online usage, suggesting that, other

things being equal, recall may be a less accurate method for recording the use of online news;^{288,289}

- (b) the share of reference does not allocate the use of news providers via an intermediary to the news provider (for example, news read from the Sky News website via Facebook will not be attributed to Sky News if Facebook is reported as the source of news in the survey response);
- (c) the wholesale share of reference of Global and Bauer radio stations should be attributed to Sky News as Sky News is the sole provider of news to IRN, which supplies Global and Bauer with news content;²⁹⁰
- (d) share of reference does not account for intensity or duration of use. As such, someone who reads a newspaper article in-depth is weighted the same as someone who reports having read news online who may have glanced at a story briefly.²⁹¹

10.63 In relation to the first of these criticisms, we note that recall data in the NCS may understate the position of online providers of news if users do not recall using a news source and/or underestimate how frequently they use online news. It is unclear what impact this would have on the share of reference of Sky News and News Corp, although we note our findings in paragraph 10.28 that the reach of The Sun and Sky News websites are relatively high (at around 20%), and the Sky News website has the second highest level of news consumption. We note that nearly all major providers of news have an

²⁸⁸We have compared reach measured by the NCS to reach as measured by BARB, NRS and comScore. In relation to BARB and NRS we have compared weekly reach and in relation to comScore we have compared monthly reach. In relation to the NCS we have defined reach as the percentage of respondents who report using a source, and report doing so at least once a week. Those who report using a source less than once a week are included, but weighted proportionally less. Some examples of comparisons include the following:

- Weekly reach of BBC One News- BARB 60% (Ofcom, [News Consumption in the UK](#), page 17), NCS 54% (CMA calculation)
- Weekly reach of ITV TV News- BARB 35% (Ofcom, [News Consumption in the UK](#), page 17), NCS 33% (CMA calculation)
- Weekly reach of Sky TV News- BARB 9% (Ofcom, [News Consumption in the UK](#), page 17), NCS 13% (CMA calculation)
- Weekly reach of The Sun- NRS 7% ([Ofcom's Public Interest Report](#), paragraph 6.15), NCS 6% (CMA calculation)
- Weekly reach of The Daily Mail- NRS 6% ([Ofcom's Public Interest Report](#), paragraph 6.15), NCS 8% (CMA calculation)
- Weekly reach of The Sunday Times- NRS 3% ([Ofcom's Public Interest Report](#), paragraph 6.15), NCS 3% (CMA calculation)
- Monthly reach of BBC News Online- comScore 60% (see Figure 5 and Figure 6, Appendix E), NCS 22% (CMA calculation)
- Monthly reach of Sky News website- comScore 21% (see Figure 5 and Figure 6, Appendix E), NCS 5% (CMA calculation)

²⁸⁹ comScore reach is found to be much higher than reach based on NCS results. One explanation could be that users as measured by comScore are not looking at news, but other content. Another is that users of online news in the NCS are selecting intermediaries instead of news websites as a source of news.

²⁹⁰ For example, submission from [Media Reform Coalition and Avaaz](#), page 13.

²⁹¹ For example, submission from [Rt Hon Ed Miliband, Sir Vince Cable, Lord Falconer and Rt Hon Ken Clarke](#), page 19.

online presence, meaning that any such bias will affect the shares of reference of all of these providers (with the potential exceptions of ITN, Global and Bauer, who have a relatively weaker online presence).²⁹² As such, any bias is likely to overstate the positions of ITN, Global and Bauer, and understate the share of reference of other providers.

- 10.64 We considered the validity of the last three criticisms and possible adjustments that might be made to the share of reference figures where appropriate. Full details of our analysis are included in Appendix F.
- 10.65 In relation to intermediaries' share of reference, we considered allocating intermediary shares of reference to news providers based on their share of reference. We found that this approach increases the Fox, News Corp and Sky combined share of reference from 10 to 11%.
- 10.66 In relation to the supply of content to Global and Bauer radio stations we found that that it is unlikely that Sky News has a high degree of control at the wholesale level over the news content provided by Global and Bauer to listeners. However, we consider that there is some control given that these stations tend to rely on the IRN output [redacted], and, as such, it is appropriate to allocate some wholesale supply to Sky News. We consider it is appropriate to allocate up to [redacted] of Global and Bauer's share of reference to Sky.
- 10.67 In relation to duration and intensity of use, we found that users of newspapers and TV news tended to use these sources for longer periods of time compared to users of internet and radio news. Such adjustments increased the share of reference of News Corp, but slightly reduced the share of reference of Sky News (due to Sky News' share of reference constituting a large number of online users).
- 10.68 Overall, adjustments for allocation of intermediaries, wholesale supply of news to IRN, and duration of use will all tend to increase the share of reference for Sky News and News Corp. We acknowledge that any estimate of the share of reference after adjustments relies on a number of assumptions. We have provisionally concluded that the share of reference should be higher than the 10% estimated by Ofcom, and is likely to be between 10 to 14%, once all these adjustments are made.
- 10.69 Fox criticised our preliminary analysis on the basis that it only presented adjustments going in one direction (ie increasing Sky News and News Corp's estimated share of reference). Fox submitted a range of alternative

²⁹² Based on CMA calculations showing shares of reference attributable to ITV, Channel 4, Channel 5 and Global and Bauer websites. See paragraph 10.58.

adjustments that could be made to reduce the share of reference of Sky News and News Corp. In particular, Fox argued that adjustments should be made to reflect:

- (a) the editorial independence of The Times and The Sunday Times;
- (b) the lack of complete control by the MFT over Sky post Transaction; and,
- (c) the loss of customers that would occur if any Sky/News Corp customers stopped using that source after any editorial changes.

10.70 Fox suggested that, if all of these adjustments were made, the combined share of reference of Fox, Sky and News Corp would fall to 5.2%.

10.71 We note that Fox's first two proposed adjustments are of a different type to those considered in our analysis because they relate largely to internal plurality rather than external plurality. We do not consider these adjustments to be valid within the share of reference measure on the basis that, as set out previously in chapter 7, we have provisionally found that the Transaction will significantly increase the extent of control that the MFT will be able to exercise over Sky News. Accordingly, because the statutory question focuses on the plurality of persons with control – and in light of the fact that we have also provisionally found that the MFT is able to exercise significant control over News Corp – we consider it is reasonable to take into account the full combined share of reference of Sky News and News Corp, without any weighting for the degree of ownership as proposed by Fox. In relation to the third proposed adjustment, we have considered the impact of audience expectations in paragraphs 8.21 to 8.26 and found that viewer expectations can change, and the loss of some customers may result in the gain of others.

Provisional conclusions on consumption and share of reference

10.72 As a result of the Transaction, the MFT will significantly increase its ability to control Sky News, the third largest news provider by share of reference. This means that because of its existing significant control over News Corp, the MFT will control a share of reference of at least 10%, possibly up to 14%. We note that the increment from the Transaction (ie combining the shares of reference of Sky News and News Corp) is large relative to the shares of reference of other established news providers, and is larger than new entrants who have grown organically.

10.73 In terms of other news providers that may mitigate or moderate the combined share of reference controlled by the MFT, we note that there are two large providers of TV news (the BBC and ITN), both of which have particular characteristics that constrain them: the BBC as a result of its regulatory and

funding model; and ITN as it provides not one significant voice, but three separate voices as demanded by the TV channels for which it provides news content. The only other providers with a share of 3% or more are DMGT and Global. After that there are a small number of established traditional news brands such as GMG, Trinity Mirror, and Telegraph Media, and a long tail of much smaller providers.

Multi-sourcing

10.74 Alongside share of reference, we have also considered the degree to which consumers multi-source, getting their news from several different providers. Fox submitted that multi-sourcing evidence is the most directly relevant empirical evidence on plurality. In principle, multi-sourcing could act as a constraint on the ability of any particular provider to influence its readers.

10.75 This section uses data from the NCS to examine the number of news sources used by individuals. It sets out evidence on:

- (a) the number of wholesale sources used by individuals, including customers of Fox, Sky News and News Corp; and
- (b) the extent to which individuals use intermediaries, which the Parties have argued are inherently plural and on which multi-sourcing will occur.²⁹³

Cross-platform multi-sourcing

10.76 Ofcom found that the average number of sources of news consumed by those who use news had been relatively stable since 2013, with an average of 3.8 retail sources of news consumed in 2016.²⁹⁴

10.77 In addition to retail sources, we also considered the average number of wholesale sources used by consumers of news. We consider that this provides a more complete picture of multi-sourcing given that users may be using multiple sources from the same producer of content. Across the period 2013 to 2016 the average news user in the NCS sample used 3.1 wholesale sources of news.²⁹⁵ However, it is important to note that there is a broad distribution around this average figure, which is shown in Figure 10.12. Roughly two thirds of news users use between one and three sources,

²⁹³ Fox initial submission on media plurality, page 13.

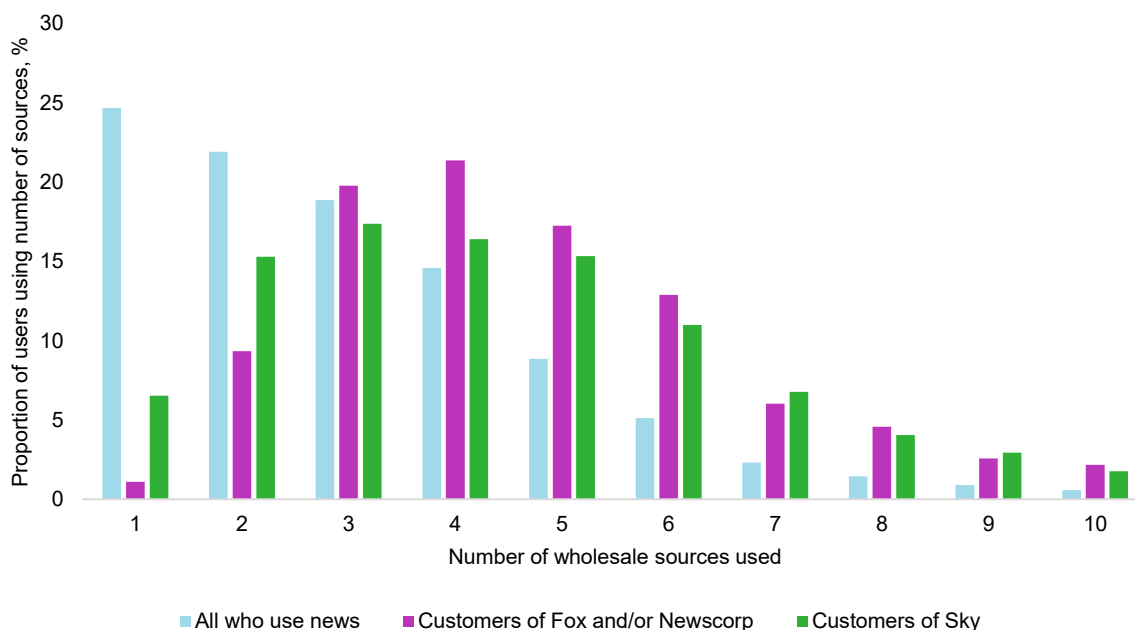
²⁹⁴ Ofcom, [Public Interest Report](#), Figure 4.7.

²⁹⁵ We are reporting statistics on multi-sourcing based on the raw data and have not weighted the results due to data limitations. We note that not weighting results does not appear to make a significant difference where comparisons are possible, although measurement of online sources tends to be biased downwards when reporting raw results.

implying that the sample average is driven up by a relatively small number of users who multi-source intensively, and almost half of news users use only one or two sources of news.

10.78 We found that customers of Sky News and Fox/News Corp responding to the NCS tended to use more sources of news than the average UK news user, with Sky News customers using 4.5 wholesale sources and Fox/News Corp customers using 4.9 sources. As in the general sample, there is a broad distribution around these average figures. Figure 10.12 shows that 30% of Fox and/or News Corp customers (corresponding to about 2.5 million people) and 39% of Sky News customers (corresponding to about 3.6 million people) use three or fewer news sources.²⁹⁶ For these customers, the news produced by the Sky News and News Corp forms a more significant part of their ‘news intake’, and as a result the influence of Sky News and News Corp is less likely to be diluted by the voice of other news providers.

Figure 10.12: Distribution of number of wholesale sources used by those who consume news



Source: CMA analysis of NCS data 2013 to 2016.
 Base: all respondents who use news (10,526), all who use Fox and/or News Corp (1,745) and all who use Sky (1,975).
 Questions 5a, 5b, 5c, 5d, 5e, 5f of the NCS: *Thinking specifically about TV/daily newspapers/weekly newspapers/Internet or apps or alerts (any device)/magazines, which of the following do you use for news nowadays?*

10.79 We also examined the news consumption of people who use both Fox and/or News Corp and Sky News. A concern might arise if there was a large degree of overlap between these consumers, since any alignment of editorial

²⁹⁶ The percentage figures derived from the NCS sample are scaled up to absolute number of news users noting that 81% of the UK population is aged over 16 according to the ONS, and 92% of the UK adult population uses news according to the NCS.

approach following the Transaction might lead to a direct reduction in the plurality of views to which they are exposed.

10.80 We used the NCS data to analyse the overlap between those who consumed both Sky News (either online and/or on TV) and one or more of the Fox and/or News Corp titles. 25% of respondents who used Sky News also used Fox and/or News Corp and 28% of respondents who used Fox and/or News Corp also used Sky News.²⁹⁷

10.81 A very small number of respondents to the NCS used only Fox and/or News Corp and Sky News, with no other news sources consumed (four out of over 11,000).

10.82 Those respondents who used sources from both Fox and/or News Corp and Sky News also tended to use a number of other sources, and used more than the average respondent who also used at least two sources (see Table 10.2). As such, we do not find particular concerns in relation to a specific user group of that obtains news from Fox and/or News Corp and Sky News.

Table 10.2: Average number of sources used by users of both Fox/News Corp and Sky compared to all comparable users

	<i>Average number of wholesale sources used</i>
Respondent who uses at least any two sources of news	3.8
Respondent who used Fox/News Corp and Sky	6.5

Source: CMA analysis of NCS data pooled over 2013 to 2016.

Multi-sourcing on intermediaries

10.83 In addition to considering the number of wholesale sources used by respondents to the NCS, we also considered respondents' use of intermediaries. Intermediaries may include using a search engine to find news, use of an aggregator such as Google News, or accessing news via social media (for example, through a Facebook news feed).

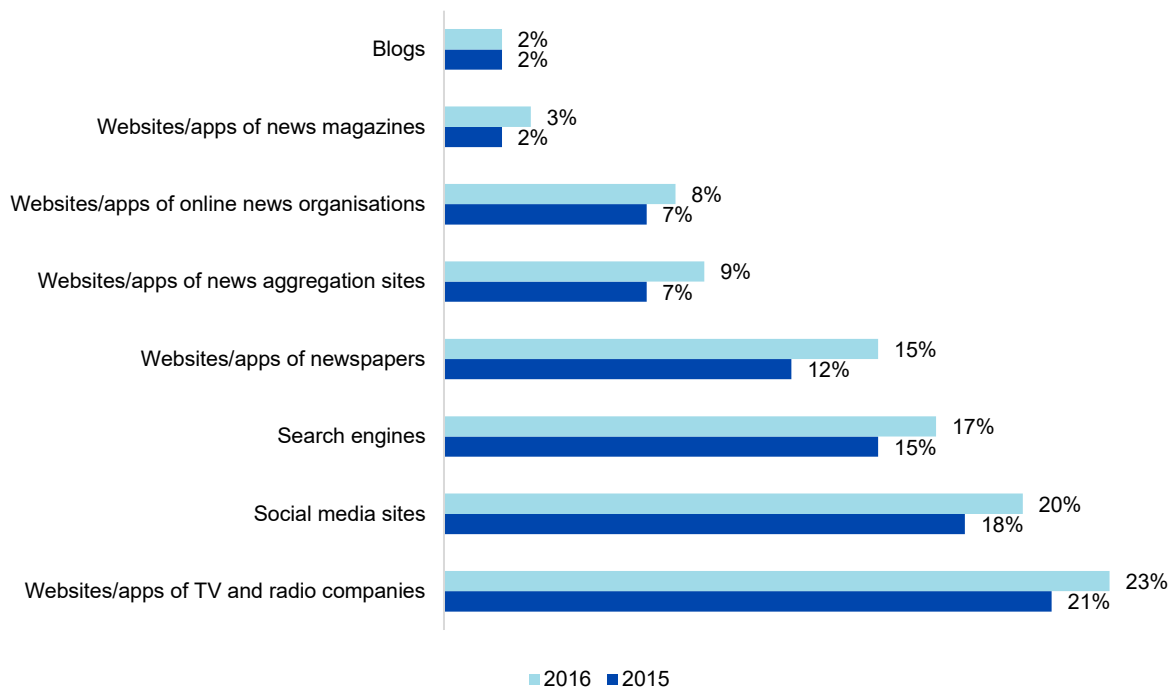
10.84 This is relevant to the plurality assessment as those users finding news via an intermediary (search engine, aggregator, or social media) are likely to be exposed to more viewpoints compared to those who access a news website directly, and as such estimates of the number of news sources used is likely to be an underestimate. We note the extent of this effect is difficult to measure.²⁹⁸

²⁹⁷ Based on pooling NCS data from 2013-2016. Base: Sky News (1,975) Fox and/or News Corp (1,745)

²⁹⁸ A user of an intermediary will be exposed to more sources of news if they view news providers via the intermediary that they would not have viewed otherwise. We do not have evidence on this, although we note that

10.85 30% of UK news users used an intermediary to access online news.²⁹⁹ More specifically, 20% of UK consumers used social media, 17% used a search engine, and 9% used an aggregator (Figure 10.13).³⁰⁰

Figure 10.13: Types of news sources used online among all adults



Source: Ofcom NCS, 2016.

10.86 We have gathered evidence from Facebook on the extent to which followers of The Sun, The Times, and Sky News follow other news sources.

10.87 Table 10.3 provides some information on multi-sourcing for the followers of Sky News and News Corp profiles on Facebook. The number reported in each cell of the table is the percentage of followers of the row profile who also follow the column profile on Facebook (for example, 42% of followers of The Sun also follow Media Outlet A).³⁰¹ Followers of The Times multi-source most frequently: two thirds also follow the Media Outlet A, and significant proportions follow a broad range of newspapers. In contrast, followers of Sky News multi-source to a much lesser extent: 57% follow Media Outlet A but

traditional news providers are relatively successful on intermediaries, suggesting that (to some extent) the sources viewed on and off of intermediaries may be similar.

²⁹⁹ In 2016. Question 3b of NCS: 'You said you use the internet or apps or alerts (on any device) for news nowadays. Which of the following do you use to get news?' Reporting results for respondents who stated they used social media or a search engine or an aggregator (785 respondents). Base: all who consume news (2,659).

³⁰⁰ There is some overlap between the set of people who use social media/aggregators/search engines with the implication that the proportion of people who use an intermediary is less than the sum of the proportions who use social media, aggregators, and a search engine, respectively.

³⁰¹ Anonymised for confidentiality reasons.

relatively few follow other titles. Followers of The Sun fall in between these two patterns: 42% follow the [✂], and significant proportions follow other news providers, especially other tabloids.

Table 10.3: Multi-sourcing for Sky News and News Corp Facebook followers

	thesun	[✂]	[✂]	[✂]	skynews	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	times	[✂]	[✂]
thesun	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
skynews	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
times	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Facebook.

10.88 This analysis focuses on patterns of multi-sourcing on one specific platform, Facebook, so it is difficult to draw comparisons with multi-sourcing in the more general population.

10.89 The evidence we gathered in relation to Facebook suggests [✂]. However, it is not clear that these are different wholesale sources compared to those being used offline (except for online-only wholesale news providers where consumption offline is not possible). Our earlier findings in paragraph 10.39 onward suggest that traditional news providers tend to do relatively well on intermediaries. Furthermore, we note that the argument that online multi-sourcing increases plurality only holds for the 30% of the population who use online intermediaries to access news.

Provisional conclusions on multi-sourcing

10.90 In sum, our analysis of multi-sourcing patterns indicates that:

- (a) while the average customer of Sky News and News Corp uses between four and five different sources of news, roughly a third of Sky News and News Corp customers use between one and three sources of news. In other words, a significant minority of Sky News and News Corp’s customers remain relatively reliant on the news content they produce;
- (b) while news consumers who use intermediaries are likely to be exposed to a broad range of news, this effect is difficult to measure, and it only concerns the 30% of news users who do use intermediaries to access news.

Provisional conclusion on impact of the Transaction on diversity of viewpoints

10.91 In chapter 7 we provisionally concluded that there will be a significant increase in the extent of control that the MFT is able to exercise over Sky and Sky News as a result of the Transaction. We consider that the significant increase in the extent of the MFT's control over Sky may give rise to a concern based on the fact that the MFT could use its increased control to influence the editorial position of Sky News, and consequently increase the alignment of Sky News' position with that of the newspapers owned by News Corp. This would lead to a reduction in the plurality of persons with control of media enterprises in the UK and may lead to a reduction in the diversity of viewpoints.

10.92 We have provisionally found that a large number of news sources are currently available to UK audiences, particularly online, despite recent reductions in the number of newspaper titles available. The Transaction would therefore not have a significant effect on the overall number of viewpoints available.

10.93 However, we provisionally consider that the Transaction is likely to result in a material increase in the MFT's control over news providers which are of significant size and position. In particular:

- (a) the MFT, through Sky News and News Corp, will be the only owner with control of media enterprises that have a presence across all four platforms - TV, radio, newspapers and online;
- (b) the Transaction will significantly increase the MFT's ability to materially influence one of these media enterprises - Sky News – which is currently the only UK-focused commercial 24-hour news channel.

10.94 Sky News and News Corp will have significant combined reach following the Transaction:

- (a) The Sun has the largest reach of any daily national newspaper, and The Times has the second highest reach of national broadsheet newspapers. The Sky News website and The Sun website reach around 20% of adults 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 news broadcasters, and as such has the third largest reach in the UK;
- (b) cross-platform reach is 21% for Sky News, 14% for News Corp, 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 be the third largest behind the BBC (77%) and ITN (39%) but almost double that of the next largest, DMGT (17%).

10.95 Sky News and News Corp will also account for a material share of news consumption on each platform:

- (a) Sky News accounts for 7% of TV news consumption, behind the BBC (76%) and ITV (12%) but significantly greater than other providers. Sky News is only just behind ITV in terms of hours of news watched, as viewers of Sky News tend to access it more frequently or for longer periods, on average, than viewers of ITV news;
- (b) The Sun has the largest readership of all daily national newspapers with an average daily readership of 3.5 million. The Times has an average daily readership of 1.1 million, and as such, both are consumed by a large number of readers on a daily basis;
- (c) Sky News, The Sun and The Times all have significant and growing online presence and brands. Sky News has the second largest share of consumption online behind the BBC, followed by The Mail Online, BuzzFeed and The Times. Sky News tends to do relatively well on intermediaries - for example, it has a large number of followers on Facebook and is one of the most viewed news channels on YouTube.

10.96 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 noted that the share of reference for Sky News and News Corp may be an understatement as, for example, intermediaries such as Facebook, who have relatively high shares of reference, do not produce their own news content. Therefore we have considered sensitivity adjustments to the share of reference metric, and these could increase the combined share of reference of Sky News and News Corp to as much as 14%.

10.97 We have considered the extent to which people use multiple sources of news, either in terms of the usage of a range of wholesale providers or through using intermediaries. While the average customer of Sky News and News Corp uses between four and five different wholesale sources of news, roughly a third of their customers use between one and three sources of news. In other words, a significant minority of Sky News and News Corp's customers remain relatively reliant on the news content they produce. In relation to intermediaries, our consumption analysis suggests that traditional news

providers do relatively well on intermediaries, suggesting that intermediaries may not be exposing users to new online-only sources. Furthermore, we note that only 30% of consumers use online intermediaries to access news. Therefore, the evidence of multi-sourcing does not remove our concern about the impact of the Transaction on the diversity of viewpoints consumed.

- 10.98 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 the 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.
- 10.99 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.
- 10.100 The BBC is the only other provider with a significant presence across multiple platforms. We acknowledge the significant role that the BBC has in informing public opinion but also consider that its role is unique based on the way it is governed and funded. This means that the BBC is under particular pressure to provide impartial and balanced news coverage. Further, unlike the MFT, the BBC does not control any newspapers.
- 10.101 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 (such as BuzzFeed or HuffPost UK) have not been able to establish a share of reference above 1%.
- 10.102 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 which includes TV with the scale of the Parties and News Corp combined could emerge.

10.103 Overall, we have provisionally found that the Murdoch family, through the MFT, will be able to exercise a significantly increased level of control over Sky and Sky News as a result of the Transaction. This, combined with the already significant level of control that the MFT is able to exercise over News Corp, will mean that the MFT will have the ability to control the way in which these media enterprises provide news to the public. We provisionally conclude that this significant increase in control has the potential to lead to a material reduction in the diversity of the viewpoints consumed by the public across and within media enterprises.

11. Influence over public opinion and the political agenda

11.1 This chapter assesses the impact of the Transaction on the ability of the MFT to influence public opinion and the political agenda and whether it leads to a reduction in the plurality of persons with control of media enterprises with influence over public opinion and the political agenda.

11.2 The concern addressed here is that the Transaction could give the MFT greater control over Sky's news and current affairs content, and that, in combination with its existing control over News Corp's titles, this could give the MFT too much influence over public opinion and the political agenda. More specifically, the Transaction might increase the ability of the MFT to influence public opinion in its own interests, which in turn may increase the ability of the MFT to influence the political agenda by:³⁰²

(a) changing a political decision (either positively to do something or negatively to not do something) because of its ability to influence public opinion or drive the news agenda on that issue;

(b) receiving favourable policy outcomes in return for support from its media outlets; and/or

(c) influencing policy outcomes because of fears from politicians of being on the 'wrong side' of the MFT with the resultant negative coverage.

11.3 This concern reflects the second strand to media plurality identified in Ofcom's measurement framework – preventing any one media owner, or voice, having too much influence over public opinion and the political agenda – and relates to one of the key reasons for protecting media plurality. Plurality is not an end in itself but makes an important contribution to a well-functioning democratic

³⁰² We are agnostic regarding the ends pursued by those interests. Whether positive or negative for society as a whole, the public interest test is based on the belief that it is not healthy for any one media owner to be a position to exert this level of influence, regardless of the aims of those interests.

society not only by enabling well informed citizens but by preventing too much influence over the political process being exercised by any one media owner.³⁰³ As noted by Ed Miliband et al:

[I]f a widespread perception develops that power over the political process resides in the hands of a few powerful media owners, that could cause apathy and disaffection among citizens, who may feel that by comparison they do not matter in the political process. That could in turn causing them to question or reject the legitimacy of decisions made by democratic institutions.³⁰⁴

Context and approach to assessing influence

Third party concerns about cross-media ownership

11.4 A number of third parties expressed concern about the impact of the MFT increasing the extent of control it has over Sky News given that it already controls media enterprises with a substantial presence across radio, online and print newspaper platforms. They argue that it will reinforce the ability of the MFT to lead the news agenda and, therefore, increase its influence over public opinion and the political agenda.

11.5 Cross-media control may increase the influence of a media owner even without a degree of editorial alignment. Third party comments indicated a potential difference between the audience for TV news and the readership of newspapers. One news provider and, to an extent, political advisers, noted the broader audience of TV news, while others commented that newspaper readership is narrower (ie comments that newspaper readers tend to reflect the ideological line of the newspaper they read). The control of a wider array of media sources which reach different audiences can allow a person with control of media enterprises to promote different issues which are relevant to different audiences, thus increasing the scope of issues over which they can influence public opinion and the political agenda.

11.6 The Media Reform Coalition (MRC) submitted that:

the merged entity will give the Murdoch family unparalleled control of news providers both within and across all news platforms. In terms of platform breadth, this dominance would be

³⁰³ [Ofcom measurement framework](#), paragraph 2.1.

³⁰⁴ Page 8, [Miliband et al. response to the issues statement](#).

unmatched even by the BBC (which is restricted to broadcasting and online-only).³⁰⁵

11.7 and that it could:

genuinely say that if this was a proposed merger between the Telegraph Media Group and Sky or even between the Guardian Media Group and Sky, and the Guardian has a very strong digital presence, [the MRC] would be raising exactly the same alarm bells and exactly the same concerns.³⁰⁶

11.8 Ed Miliband et al also stated:

The cross-platform empire that would result would retain its current ability to influence the news agenda on other outlets, including the BBC, through its newspapers but in addition would now be able to amplify that through Sky News and Sky Radio. This power [...] would be unprecedented and would put them in a different league to any other commercial media owner, including ITV.³⁰⁷

11.9 We note that these third party concerns relate particularly to the ability of the MFT following the Transaction to control media enterprises which operate across different media platforms. As different media platforms may reach different audiences, running the same story or promoting the same issue across different media platforms can extend the reach of the particular person with control of media enterprises. This may suggest that cross-media ownership has a much wider impact, as it means that a media owner can influence a much broader audience that might otherwise not choose to read that media owner's newspapers. Further, the repetition of a story across-platforms may have an amplification effect, especially if one of the media platforms is seen as more trusted than others.

Approach to assessing influence

11.10 The concern about the extent of the MFT's influence over public opinion and the political agenda following the Transaction is closely related to the concern about a reduction in the diversity of viewpoints addressed in the previous chapter. Ofcom states that a media owner can be prevented from having too much influence by ensuring that no organisation or news source has a share

³⁰⁵ [Media Reform Coalition and RC/Avaaz response to issues statement](#)

³⁰⁶ [See Transcript of hearing with campaign groups.](#)

³⁰⁷ [Miliband et al - Overview of submission, response to issues statement.](#)

of consumption that is so high that there is a risk that people are exposed to a narrow set of viewpoints.³⁰⁸ We would also expect influence to be related to the size of a particular news provider's audience – the greater its reach and consumption, the more influence we would expect it to have over public opinion and the political agenda.

- 11.11 We provisionally found in chapter 10 that the Transaction will result in a material reduction in the plurality of persons with control of the viewpoints consumed by the public which could lead to a reduction in the diversity of the viewpoints consumed. All things being equal, we would expect this to enable the MFT to exercise greater influence over public opinion and the political agenda following the Transaction.
- 11.12 The Parties submitted that the impact of the Transaction will be minimal due to the small size and relative lack of influence of Sky News. They also suggested that [REDACTED]. The Head of Sky News noted that [REDACTED].
- 11.13 We note that Mr Neil considered that Sky News' 'small audience' limited any influence that Sky News would provide Fox.³⁰⁹ ITN also stated that

The services [ITN] provide[s] have larger audiences because they are bulletins on major platforms. So the individual audience of Sky News may peak at, I do not know, 70,000³¹⁰ viewers in the course of the day at any one time? Its reach across the day in aggregate will build. Whereas the smallest of our services on Channel 5 News, the 5.00 pm news will, say, have 0.5 million people watching, and the 6.30 pm news with ITV, which is the largest commercial news programme, maybe 3.5 million viewers watching that. Therefore the services that we provide clearly have larger audiences than Sky News. [...] By far the most watched TV news programmes in this country – by far – are the bulletins on BBC, ITV, Channel 4 and Channel 5. Arguably, far and away the greater impact in terms of awareness of what is going on than 24-hour news, either BBC or Sky News in that regard.³¹¹

- 11.14 However, we consider that there are several factors about Sky News which mean that its impact will be larger than raw reach figures suggest. The analysis in this chapter therefore considers whether there are specific

³⁰⁸ [Ofcom measurement framework](#), paragraph 2.2.

³⁰⁹ [Transcript of hearing with Andrew Neil](#).

³¹⁰ Analysing BARB statistics for the top 10 shows on each channel, peak audience in each week were between 170,000 and 239,000. We note that most popular shows on Sky News are on Sundays and Mondays. However, while 70,000 is an underestimate of the peak number of viewers per day, we recognise the difference between peak audiences of Sky News vs audience of news bulletins on other TV channels.

³¹¹ [Transcript of hearing with ITN](#).

characteristics of Sky News, the News Corp titles and their audiences, and of the MFT's control of these news providers, which might indicate a greater or lesser concern about the degree of influence by the MFT over public opinion and the political agenda following the Transaction, beyond that indicated by the analysis in chapter 10. In particular, we assess whether the MFT's control of cross-platform media enterprises, which is increased as a result of the Transaction, could amplify the MFT's influence.

11.15 We consider that significantly increasing its control of Sky News, given its existing significant control over News Corp, could have the potential to amplify the MFT's influence in four main ways and our analysis focuses on these issues:

- (a) by enabling the MFT to exercise influence over the public in a variety of different ways and through different media – allowing it to span a spectrum from TV news focused largely on factual reporting, through to unregulated opinion and comment in newspapers and online;
- (b) more trusted news providers are more influential and the addition of a trusted news provider will increase the influence of the MFT. A news provider with a small audience but which is highly regarded may be able to influence wider public opinion and the political debate;³¹²
- (c) by enabling the MFT to target different groups of customers who might have preferences for consuming news through different platforms. We consider quantitative evidence on audience characteristics to assess whether the MFT's control of news providers can or will enable it to reach out to an audience that is itself influential and/or whether the Transaction will result in the addition of a different type of audience which will result in the MFT being able to influence a wider section of the public; and
- (d) by taking advantage of the interaction between newspapers and TV news in order to increase its influence over the wider news agenda. We consider quantitative and qualitative evidence on the ability of Sky News and News Corp to lead the news agenda – the ability to lead the news agenda is a reflection of influence and if increased by the Transaction would mean the MFT, through its control of these news providers, is more able to influence public opinion and the political agenda.

11.16 Finally, we set out evidence on the MFT's influence on the political agenda through the News Corp titles. This includes the findings of the Leveson

³¹² It is not necessarily the case that a low level of trust will negate the influence of a news provider with a larger audience.

Inquiry, quantitative evidence on contact with ministers and qualitative evidence from those involved in political decision making to look at the degree to which the MFT influences the political agenda compared to other persons with control of media enterprises.

Impact of the Transaction on the ability of the MFT to influence through different media platforms

11.17 This section addresses the first way that the MFT's control of media enterprises across each platform following the Transaction might amplify its influence: by giving the MFT the ability to influence through Sky News as well as the News Corp titles. We set out how media owners can influence public opinion and the political agenda. We then assess the extent to which Sky News might be able to influence in different ways from the News Corp titles following the Transaction.

How media owners influence public opinion and the political agenda

11.18 The media³¹³ can influence public opinion in two ways:³¹⁴

- (a) shaping what the public think about through story selection, given the public does not have the capacity to process every issue; and
- (b) shaping how the public think about an issue, through a particular editorial stance.

11.19 Influence over the political agenda is linked to influence over public opinion, although it is not a prerequisite. A person with control of media enterprises, like the MFT, may have influence over the political agenda because:

- a) politicians want to use the media to put their views or policies across to the public;
- b) politicians care about what the media say about them, not directly related to their influence on public opinion;
- c) politicians consider that what the media says reflects public opinion,³¹⁵ and/or

³¹³ And others seeking to influence public opinion, such as politicians or political parties.

³¹⁴ For more discussion on this, see page 2, Weimann, G. and Brosius, H. A new agenda for agenda-setting research in the digital era, *Political communication in the online world: theoretical approaches and research designs*, Ed. Vowe, G. and Henn, P. (December 2015).

³¹⁵ This may arise through a perception that a particular media owner has the ability to influence public opinion (provided, for example, through attempts, successful or otherwise, to mobilise their audience on a topic that they

d) politicians are particularly keen to increase their exposure to the public while avoiding negative stories about themselves or their policies.³¹⁶

11.20 Further, the ability to influence the political agenda may in turn lead back to influence over public opinion. As the political agenda is itself news, being able to directly influence what is on the political agenda, and the issues that are raised and debated, will therefore enable the relevant media owner to influence what issues are covered by the rest of the media and, ultimately, influence public opinion.

11.21 While there was a general consensus among third parties that submitted evidence that the media could raise the prominence of particular issues (ie what the public thinks about), there is some debate as to whether the second of these (how they think about it) is possible. A number of third party news providers indicated that at best this was limited to shaping public opinion in ways to which readers or viewers were already sympathetic.

11.22 Peter Wright (Editor Emeritus of the Daily Mail) told us that that newspapers:

have a role in bringing to the attention of the public both things that you think are important and may be neglected elsewhere and things that you think they will find important or interesting in one way or another [but] you cannot force stories or opinions down readers' throats. You can only push on an open door.

11.23 Mrs Brooks noted the 'symbiotic relationship between a newspaper and its readers' and that newspapers 'take on a campaign and an issue and, as an editor, always with your readership.'

11.24 Mr Gallagher of The Sun said:

You do not really want to place yourself wildly at odds with the readers and annoy them [...] Commercially, I think, it is foolish for newspapers to not be close to their readers. Newspapers that get too far away from their readers pay a price in terms of lost newspaper sales. It just annoys the reader.

already care about, even if there is no actual ability to switch minds or votes), rather than evidence of actual ability. However, it is important to stress that, in assessing influence over the political agenda, we are looking for evidence of actual influence, and are not seeking to measure politicians' perceptions.

³¹⁶ See in particular comments by [Ed Miliband et al](#) that 'If a company has too much influence over public opinion and the political process, this could make not just politicians, but officials at institutions normally responsible for ensuring enforcement of regulations and laws afraid of 'taking on' the company in question by doing their jobs properly. In this way, excessive influence could corrupt the workings of key civic institutions tasked with investigating wrongdoing, like the police and regulators.'

11.25 Kenneth Clarke MP noted a similar point but also added that editors can lead their audience to some extent:

The newspaper editors, a bit like the politicians, adjust their message and adjust what they give priorities to in response to what they think is the view of their readers or their voters. These two warring professions are not totally different, and a newspaper or a television channel like Fox will not sail in the face of what they rapidly perceive to be the views of their readers, but they do know where they are trying to go and they know how to put their campaign the way it wins.³¹⁷

11.26 However, even if the media is limited in its ability to change people's minds on a particular topic (although not completely precluded from doing so), as noted by Ed Miliband et al, even just being able to shape what the public thinks about would still enable a media owner to influence:

opinion about themselves, their political friends and enemies, and their rivals in the markets they operate in. For instance, the news outlets they control could give added prominence to stories which damage the public's trust in their rivals and enemies, and hide or play down stories which might damage the public's trust in themselves, or damage other commercial interests of the media owner.³¹⁸

11.27 Further, news providers may be able to convince politicians that they can direct and are reflective of public opinion by focusing on issues their audience already cares about, even if they cannot otherwise in practice direct their views. For example, newspaper charity campaigns, which get considerable responses from their readers, tend to involve issues which already resonate with their readers – such as The Sun's focus on an armed forces charity and The Independent's focus on refugees.

11.28 In this context, we note that Fox argued that the News Corp newspapers lack the influence that they used to have due to the overall fall in newspaper readership and, in particular, the fall in the readership of the News Corp titles, in which the MFT has an interest. Fox notes various articles by media commentators which argued that the result of the 2017 general election, directly contrary to the editorial line of much of the press, including all of the News UK newspaper titles controlled by MFT, is evidence that the influence

³¹⁷ [Transcript of hearing with Ed Miliband et al.](#)

³¹⁸ Ed Miliband et al, [Response to the issues statement](#), page 8.

previously held by those papers is diminished.³¹⁹ This argument was echoed by News Corp. For example, Mr Gallagher argued that the influence of The Sun had been historically overplayed, noting low voting turnout of Sun readers at the 2017 general election.

11.29 However, we also note the EU referendum just a year earlier where the influence of traditional news providers³²⁰ – particularly of the newspapers – was considered important (and when the editor of The Sun noted ‘so much for the waning power of the press’).³²¹ As such, we consider that looking at the influence of the media over one-off time limited events is inconclusive, and our analysis needs to take account of additional factors over a longer term.

Differences between the influence of TV broadcasters and newspapers

11.30 Editorial influence may take the form of a direct approach promoting specific partisan editorial lines in an attempt to influence both what issues the public thinks about and how they think about them. Alternatively, it may take a subtler approach involving story selection and prominence which may influence what is thought about, but may only indirectly be able to shape how the public thinks about an issue.

11.31 These different approaches are reflected in the way that newspapers, online, and TV news operate in the UK. TV news providers are subject to the Broadcasting Code, with news content particularly constrained by the requirements of due impartiality and accuracy.³²² Conversely, newspapers and online news providers are under no similar constraints.

11.32 As such, newspapers and online news providers can and do take expressly partisan editorial lines in their reporting of the news, without having to present a balanced argument. For example, they can be explicitly for or against a particular political party or issue. This means that they can try to both influence what is thought about and how the public thinks about it.

³¹⁹ We note that one of those referenced by Fox, Professor James Curran, told us that Fox had misrepresented his views regarding the influence of the press in the 2017 election and that he considered the press was still highly influential. Even if they had not had an impact in the election, they still have a cumulative effect over months and years through the issues they raise and how they cover them. (James Curran, [Response to issues statement](#)).

³²⁰ By traditional news providers, we mean the News Corp titles (and their associated online operations); the Daily Telegraph, The Guardian, DMGT, the Lebedev titles (The Evening Standard and The Independent), Trinity Mirror titles and their associated online operations; and the BBC, ITV, Channel 4, Channel 5 and Sky News broadcast news programmes and their associated online operations.

³²¹ See [The Guardian, 24 June 2016, Did the Mail and Sun help swing the UK towards Brexit?](#) When asked about this comment in his hearing, Mr Gallagher said that the comment was made privately as an observation on comments from Downing Street that, if Remain had won, it would have ‘dealt a mortal blow to the reputations of newspapers’ and undermined their reputation for being on the right side of political arguments.

³²² See chapter 5 for a more detailed discussion of the Broadcasting Code.

11.33 The Broadcasting Code means that TV news providers cannot take a similar approach. Indeed, the Parties have argued that the Broadcasting Code means that the ability of any media owner to exert influence through broadcast news is limited and thus the impact of the Transaction is minimal.³²³ However, as we note in chapter 5, even within the constraints of the Broadcasting Code, an overall editorial approach involving story selection and prominence is still possible. For example, ITN notes of the channels it provides news services for that:

Channel 5 News tend to do news of the day and follows a slightly more domestic agenda, but still does international news, will do features on matters of significant importance, say in the world of healthcare, and will, from time-to-time do investigations to hold power to account. Channel 4 News has a greater investment in revelatory stories, investigations, holding power to account. And so that is an editorial decision. Still operating under exactly the same broadcasting codes, but will have as an ambition to reveal more.³²⁴

11.34 As such, a TV news provider can at least influence what the public thinks about while still operating within the Broadcasting Code.

Provisional conclusion on the impact of the Transaction on the ability of the MFT to influence through different media platforms

11.35 While television news cannot take the same direct approaches as print media, we find that broadcasters like Sky News can still influence their audiences through editorial decisions around story selection and prominence.

11.36 Further, we note comments from Mr Neil that ‘you cannot really now be big in broadcast news unless you have a 24-hour news channel. You can have other news outlets but you need a 24-hour news’ and from ITN that politicians especially value 24-hour news because there are more opportunities to appear on it.³²⁵ In this context, Sky News is one of only three providers of broadcast news (BBC, Sky News and ITN) and the only significant 24-hour news channel in the UK other than BBC News 24.

³²³ For example, see [Fox initial submission on media plurality](#), paragraph 4.33(ii).

³²⁴ See [transcript of hearing with ITN](#).

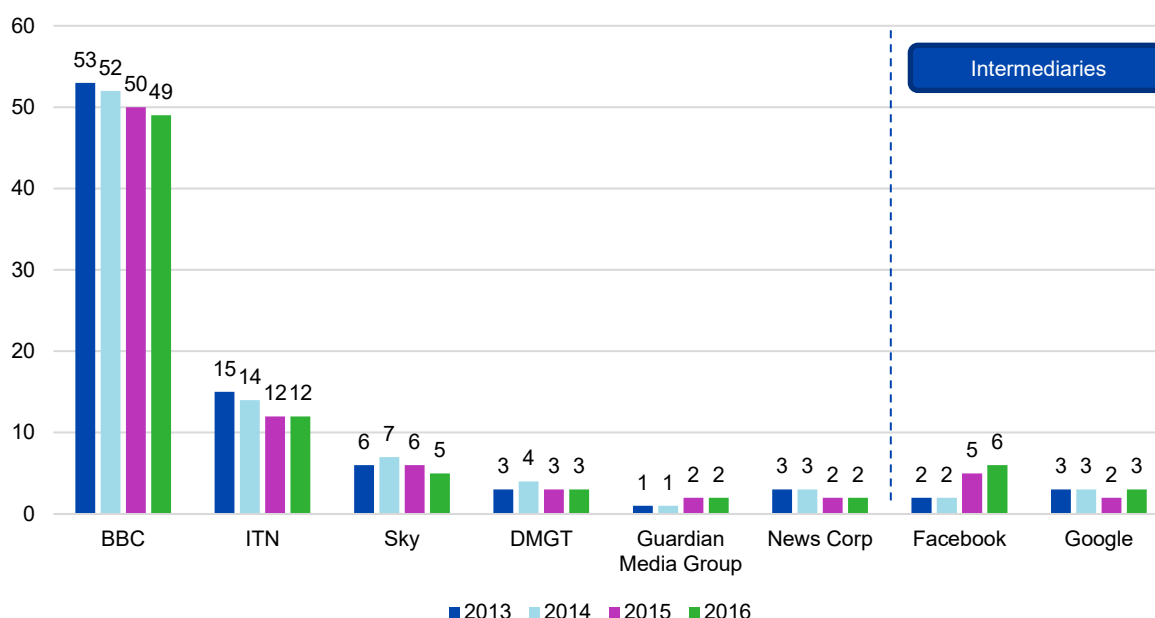
³²⁵ See [transcript of hearing with ITN](#).

Trust in news providers including Sky News and News Corp

11.37 Although reach and consumption statistics tell us how many and what type of consumers news providers can impact directly, a news provider may have an impact beyond its existing audience if it is trusted, as set out at paragraph 11.15(b). This may mean both that it is more likely to be picked up by other news providers and so lead the news agenda and that it may have more influence on its audience as people rely more on the news providers they trust most out of those they consume.

11.38 Analysis of Ofcom’s NCS shows that in 2016, the BBC was the most important news provider to consumers, with 49% of news consumers saying it was their single most important news provider (see Figure 11.1), followed by ITN (12%), and Sky News (5%). In general, we would expect that consumers would trust those news providers that they consider important.

Figure 11.1: Single most personally important wholesale news provider, 2013 to 2016 (%)



Source: Ofcom NCS 2016. Q8a: *Looking at all the sources of news you have said that you use, which one is most important to you personally?*

Base: All who use any news source nowadays 2016 (2618), 2015 (2588), 2014 (2553), 2013 (2628).

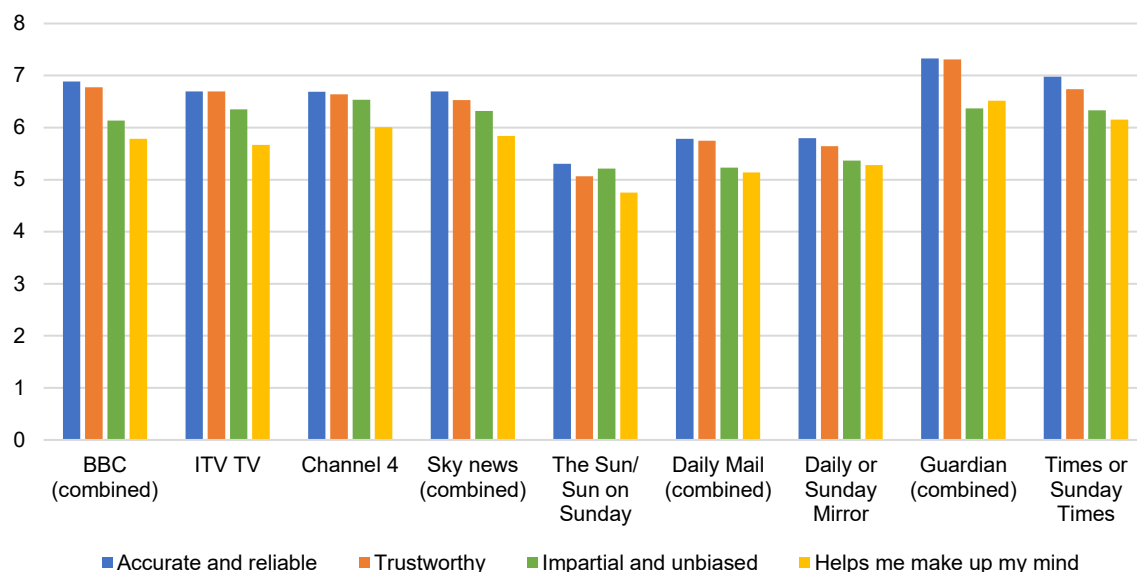
Note: only entities over 1% shown.

11.39 For consumers of the particular news providers, Figure 11.2 shows us that the trust scores for all the broadcasters, including Sky News, are relatively high compared to other types of news providers. This is consistent with TV news more generally being considered an influential medium.³²⁶ The Guardian and

³²⁶ For example, comments by the Editor of an online news provider that ‘people still have this historical perception that everything they see on television has to be true because they would not let them put it on television’ and more general comments by Mr Neil ([Hearing with Andrew Neil](#)), one news provider, and the various former special advisers that we heard from that TV is considered highly influential.

The Times/Sunday Times score highly too, with higher scores than broadcasters on two of the metrics.

Figure 11.2: Average trust scores (2016)³²⁷



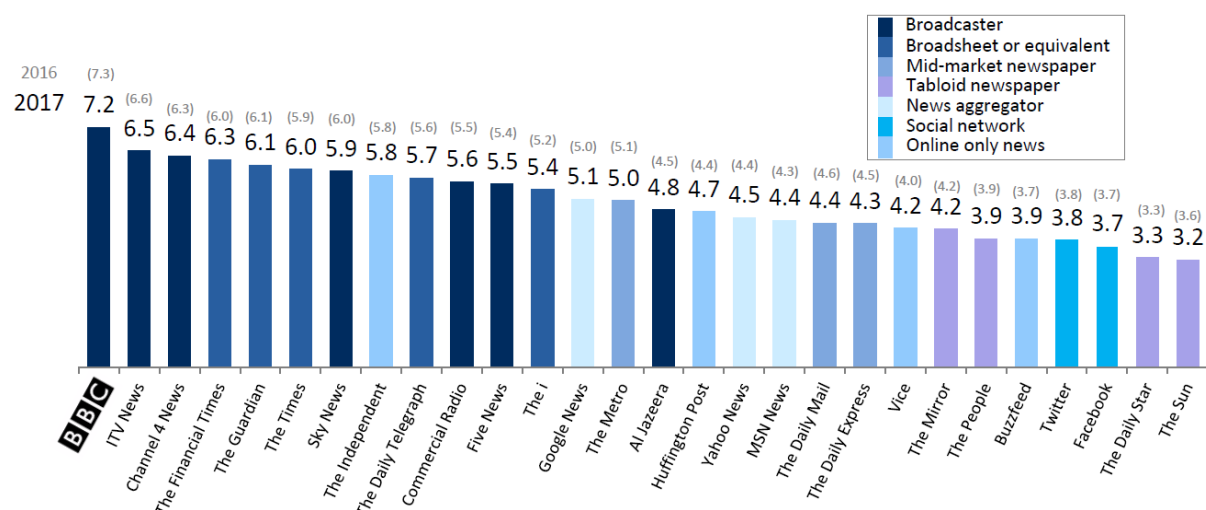
Source: Ofcom NCS 2016. Questions 9c of the NCS: *And to what extent do you think the following statements apply to [BRAND] as a news source? Answer using a scale of 1 to 10 where, 1 is NOT AT ALL and 10 is COMPLETELY*
 Base: those who use BBC (2,313), ITV (947), Channel 4 (184), Sky News (509), The Sun/The Sun on Sunday (184), Daily Mail (358), Daily or Sunday Mirror (114), Guardian (163), Times or Sunday Times (102)
 Notes: Combined scores are a weighted average of the online and TV/newspaper score. There was a very high degree of correlation between offline and online scores, suggesting that the brand/reputational values of the offline brand is carried through to the online site. We have only included outlets with more than 100 responses in 2016.

11.40 The results from the NCS are consistent with a report from the BBC on public perceptions of its output³²⁸ which takes account of all news consumers, not just the consumers of the particular titles (see Figure 11.3).

³²⁷From the NCS, we have primarily relied on the following metrics: (a) Is the news provider accurate and reliable; (b) Is the news provider Trustworthy; (c) is it impartial and unbiased; and (d) does it help me make up my mind. In NCS, there are two other measures of trust: 1) Offers a range of opinions; and 2) Is of high quality. We note that there is a high degree of correlation between the different metrics, so have chosen to display results from only four of the metrics.

³²⁸ This report collates data from two surveys about public perceptions of the impartiality and trustworthiness of the BBC. The first is an ongoing monthly nationally representative survey by Kantar Media for the BBC that allows the BBC to gauge public opinion of the BBC on a regular basis. The second is a nationally representative face-to-face survey conducted for the BBC by Ipsos MORI. The survey was designed to understand the range of scores that the public gives to news providers in terms of trust and impartiality, and how the BBC performs in comparison with the wider market.

Figure 11.3: Mean trust score of different news providers³²⁹



Source: Ipsos MORI for the BBC.

Base: UK adults 15+ who follow the news (half sample answering about trust: 933), Jan-Feb 2017.

Notes: Response to question *To what extent do you trust [insert source] as a news source?*

Newspaper titles include The Sunday edition

Mean score / 10: 1 = do not trust at all; 10 = trust a great deal

11.41 Trust levels for tabloid news providers appear to be lower, particularly for The Sun and The Sun on Sunday. Fox submitted that this is a reflection of the type of content which those papers are known for – celebrity gossip rather than detailed and authoritative coverage of political issues (and therefore that such newspapers are not likely to have much influence on political issues).³³⁰ However, we note Mr Gallagher’s comment that The Sun places a high premium on exclusives, giving examples of much ‘harder’ news such as the killing of the so-called ‘White Widow’ in the Iraq/Syria conflict and sexual misconduct among MPs (although we acknowledge that the content of tabloid newspapers online, and particularly the online content consumers engage with, can be substantially different from the print versions and tends to involve less news content).

11.42 While having lower trust scores may indicate a lower degree of influence, there are limitations in using the metrics above, which were highlighted in Ofcom’s Public Interest Report:

- a) people may not be aware of the impact that a particular news provider has upon them. News Corp titles (and others) may have the potential to influence all of their respective readers to varying degrees, in ways not picked up by these metrics;³³¹

³²⁹ For further details of this survey [BBC ‘Public perceptions of the impartiality and trustworthiness of the BBC’ \(November 2017\)](#), slides 5 to 12.

³³⁰ [Fox response to the issues statement](#), paragraph 2.14.

³³¹ [Ofcom Public Interest Report](#), paragraph 7.15.

- b) the metrics may overstate the impact of TV news because broadcasting regulation has ‘helped to construct a strong attachment to broadcasting as a highly trusted medium’;³³²
- c) an ‘acceptability bias’ may lead to these metrics understating the use of certain sources because ‘the degree to which consumers will be prepared to report, in a face-to-face survey, their attitudes to different news sources is likely to be conditioned by their perception of how socially acceptable it is to have those attitudes’;³³³ and
- d) news providers with lower trust scores may nonetheless reach a large number of consumers, or they may have a role in leading the news agenda, both of which will in themselves provide influence.

11.43 This last point demonstrates that the relationship between the factors affecting influence and the raw numbers on reach can work both ways. A news provider with a small audience may be particularly influential if it is highly trusted as its readers may rely on it more than other news sources they consume, and it may have a greater ability to be picked up by other news providers and drive the news agenda. Conversely, even if not highly trusted, a news provider with a larger audience is still likely to have some influence over its audience and the public in general.

Provisional conclusion on trust

11.44 We find that Sky News, The Times and The Sunday Times have relatively high levels of trust. Sky News as a broadcaster is particularly highly trusted. This might therefore give these providers a greater level of influence beyond that indicated by their reach, and increase the impact of the Transaction on the MFT’s ability to influence public opinion and the political agenda.

Impact of the Transaction on the MFT’s influence over different audiences

11.45 This section addresses how the Transaction might enable the MFT to influence different audiences and demographics. As we set out in paragraph 11.15, the Transaction may enable the MFT to influence a wider range of different demographics, some of which may themselves be influential.

³³² [Ofcom Public Interest Report](#), paragraph 7.6. View put forward by Professor Steven Barnett.

³³³ [Ofcom Public Interest Report](#), Paragraph 7.6. Views put forward in submission from Ed Miliband et al to Ofcom.

11.46 We first outline how the increased control over Sky News will enable the MFT to reach a bigger audience. Second, we set out evidence on the different audience characteristics of Sky News and the News Corp titles.

Impact of the Transaction on audience reach

11.47 We would expect different individuals to have preferences for different types of news media. Some will largely get their news from TV news; others will read newspapers or use online intermediaries. Ofcom's NCS provides detailed evidence on the diversity of consumers' preferences in accessing news. Given this diversity, cross-media ownership can enable a person with control of media enterprises to appeal to a wider set of people than would be possible through a single channel.

11.48 The evidence in chapter 10 (see Figure 10.5) suggests that Sky News and the News Corp titles have a current reach of around 21% and 14% respectively. The total reach for the two combined would be around 31%. This suggests that there is currently relatively limited overlap between consumers of Sky News and readers of the News Corp titles, and that the Transaction would give the MFT greater influence across a wider customer base.

11.49 A similar conclusion can be drawn from direct evidence from the NCS on the degree of overlap between the customer base of Sky News and the News Corp titles. Based on NCS data, 25% of respondents who used Sky News also used either Fox or News Corp and 28% of respondents who used Fox or News Corp also used Sky News.³³⁴

11.50 Further, as noted in paragraphs 11.58 and 11.59, this wider customer base will involve an additional demographic (particularly through Sky News' online activities), providing the MFT with a broader demographic reach.

11.51 With respect to frequency of use, further analysis of the NCS showed that of the 14% of population that consume news from News Corp, 25% of the time they consume news is from News Corp and 5% is from Sky News.³³⁵ Therefore, by bringing both media sources under the control of the MFT, this would increase the share of times that news is consumed by MFT controlled

³³⁴ Based on pooling NCS data from 2013 to 2016. Base: Sky News (1,975) Fox and/or News Corp (1,745).

³³⁵ Based on analysis of NCS, 2016 data. The NCS asks respondents how often they use a news source, and assigns weights by frequency of use. Therefore, it is possible to calculate the number of 'contacts' a respondent has with the news in a week. News Corp users report having 56 'contacts' with the news in a course of a week, 14 of which are with News Corp titles and three of which are with Sky News. This means that 25% of 'contacts' are with News Corp and 5% with Sky News. Note that this is the number of times a consumer accesses news rather than the amount of time they spend with each news provider.

outlets by five percentage points to 30% for a certain proportion of the population.

Audience characteristics of Sky News and News Corp

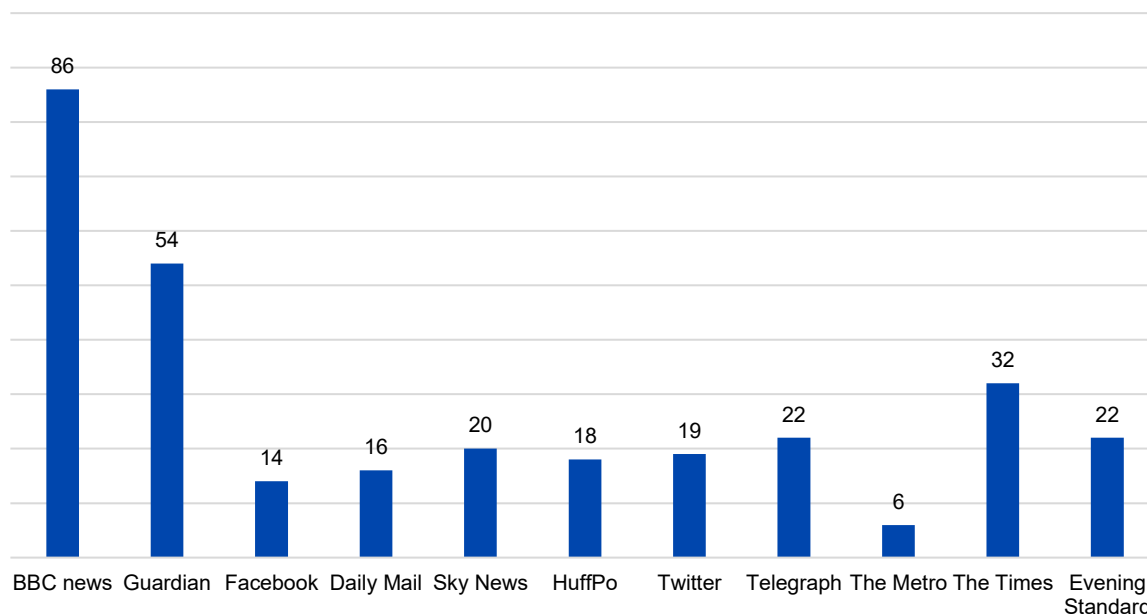
- 11.52 A media source might have greater influence with lower reach and consumption if it reaches those who are themselves more influential. For example, The Financial Times considers its role is to ‘appeal to people who make or influence decisions in business, finance and public affairs’. As such, even if The Financial Times has a lower reach or level of consumption, it might still have a much higher influence due to the nature of the people reading it. Similarly, The Times describes itself as ‘the paper of record’, while we note that Mr Neil considers TV to be more influential than the press not only due to the number of people that watch it but also the demographic involved.³³⁶ Further, if the audience is more likely to vote then the news provider may be more influential over the political process.³³⁷
- 11.53 YouGov has built an online panel of ‘opinion formers’ in the UK. These are described by YouGov as leaders in their field, drawn from business, politics, media, public sector, charities, academia and beyond. Data from YouGov³³⁸ allowed us to see what news sources are relied on by this panel of ‘opinion formers’. The news providers that influence them could be expected to have greater influence overall. The news providers on which they rely can be seen in Figure 11.4.

³³⁶ [Transcript of hearing with Andrew Neil](#)

³³⁷ [Analysis by Ipsos Mori](#) shows that in the 2017 general election, the higher social classes and older groups were more likely to vote.

³³⁸ See [YouGov How today's voters get their political news: Polls conducted on behalf of the London Press Club and Society of Editors](#). We note that YouGov use an online panel. Online panel surveys tend not be representative of the target population as online panellists are generally heavier Internet and technology users compared to the general population. It is likely that respondents on YouGov online panel use online news in a different way than online news users in general and they may have different views about them, so the results may be misleading.

Figure 11.4: Commonly used news sources for opinion formers



Source: YouGov.

Base: All Opinion Formers (721)

Notes: Response to *Which of the following do you tend to get political news from, either in printed or online format, very regularly?*

Chart shows top 10 responses based on general public data, plus The Evening Standard and The Metro.

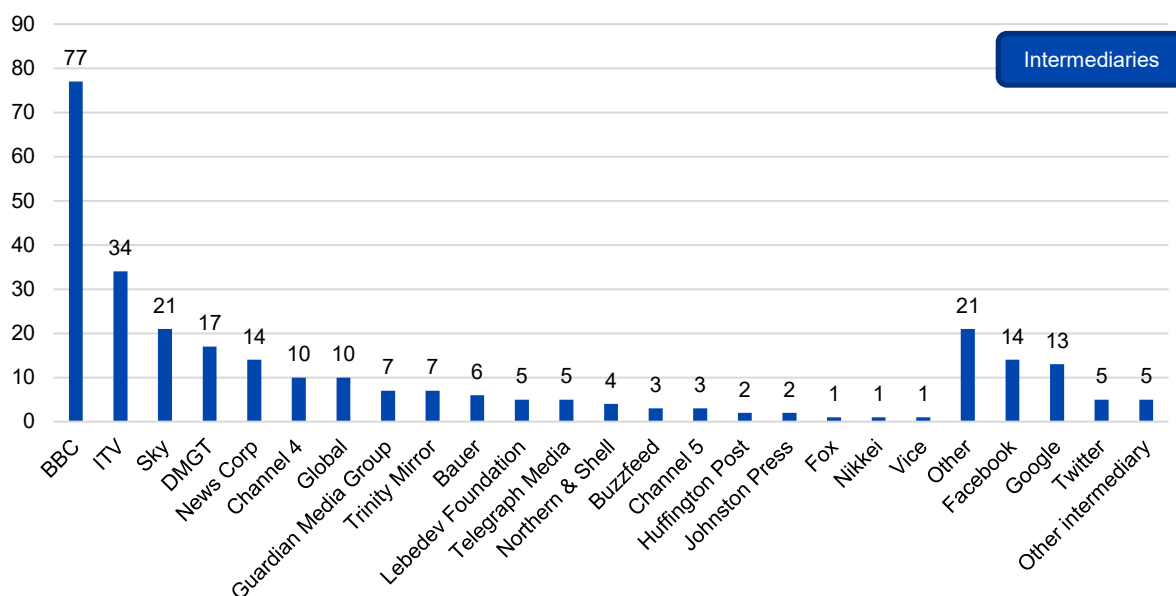
11.54 Looking at this data, we see that these opinion formers appear to use broadsheet newspaper brands, such as The Guardian,³³⁹ The Telegraph and The Times, more than the general population. They also appear to consume more news from a wider variety of sources.³⁴⁰ We further note that opinion formers in the YouGov survey use Sky News broadly in line with the general population (as indicated in the NCS in Figure 11.5). (We note here that Figure 11.5 uses retail cross-platform reach, rather than the wholesale measure used in Figure 10.5, to allow us to make comparisons with the YouGov data).³⁴¹

³³⁹ We note that The Guardian has moved to a tabloid brand as of January 2018.

³⁴⁰ Including online sources such as Twitter and HuffPost.

³⁴¹ We note here that the YouGov and NCS surveys are carried out on a different basis, and so are not directly comparable. However, we consider the results are broadly indicative and comparable.

Figure 11.5: Retail cross-platform audience reach of providers used 'nowadays' for news: 2016



Source: Ofcom NCS 2016.

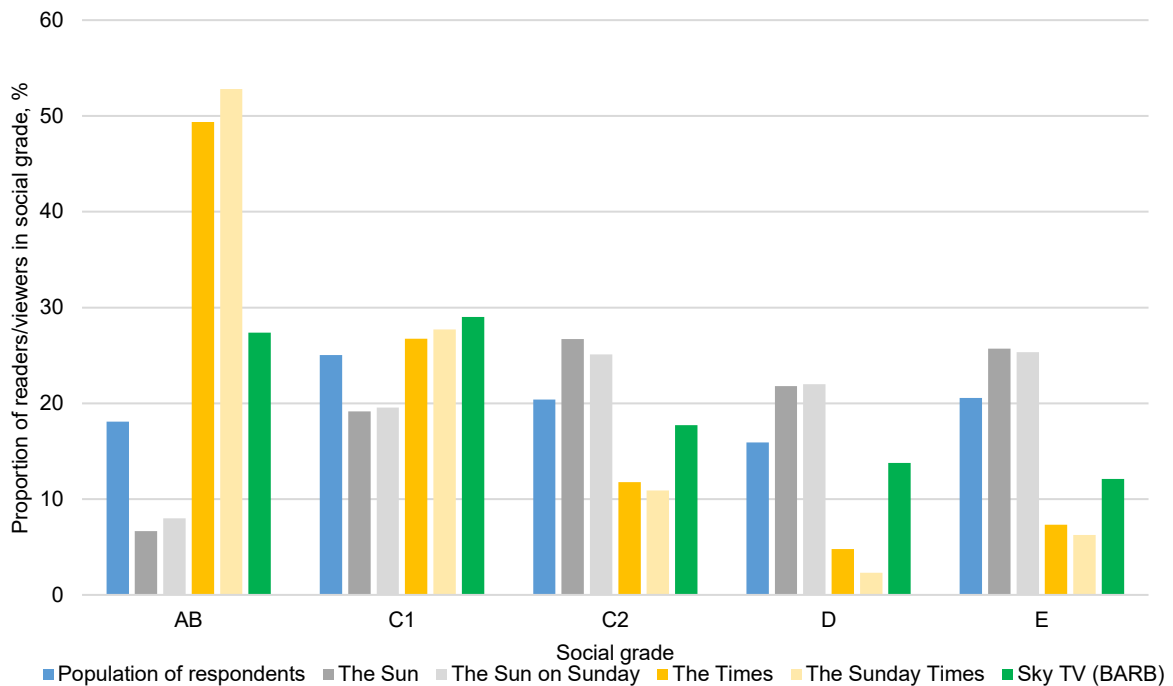
Base: All adults 16+ who use Television, Printed Newspapers, Radio, Internet, or Magazines for news nowadays (2659)

Notes: 'Google' contains all Google-named entities plus YouTube. 'Other intermediary' includes MSN, Yahoo, Feedly, Flipboard, News Now.

11.55 We next consider the demographic makeup of consumers of News Corp and Sky News outlets. As with opinion formers, there are certain demographic groups which may be more influential. For example, reaching those groups which are more likely to vote may increase influence. We have also considered whether Sky News adds an extra demographic compared to those reached by the News UK titles that the MFT already controls (thus allowing the MFT to greater promote interests than it may have been able to with the pre Transaction level of control of Sky News).

11.56 Our analysis of the NCS shows that The Times and The Sunday Times are able to attract more customers from the higher social classes (see Figure 11.6) than in the general population. Data from BARB shows that Sky News (TV) appears to have a more balanced audience across the social classes (although we note that it also outperforms with the higher social classes, meaning that the MFT will benefit from greater access to a more influential audience segment, as well as greater access to other demographics) although the picture is more mixed with respect to its web presence as measured by comScore (see Figure 11.7).

Figure 11.6: Proportion of readers/viewers in each social grade



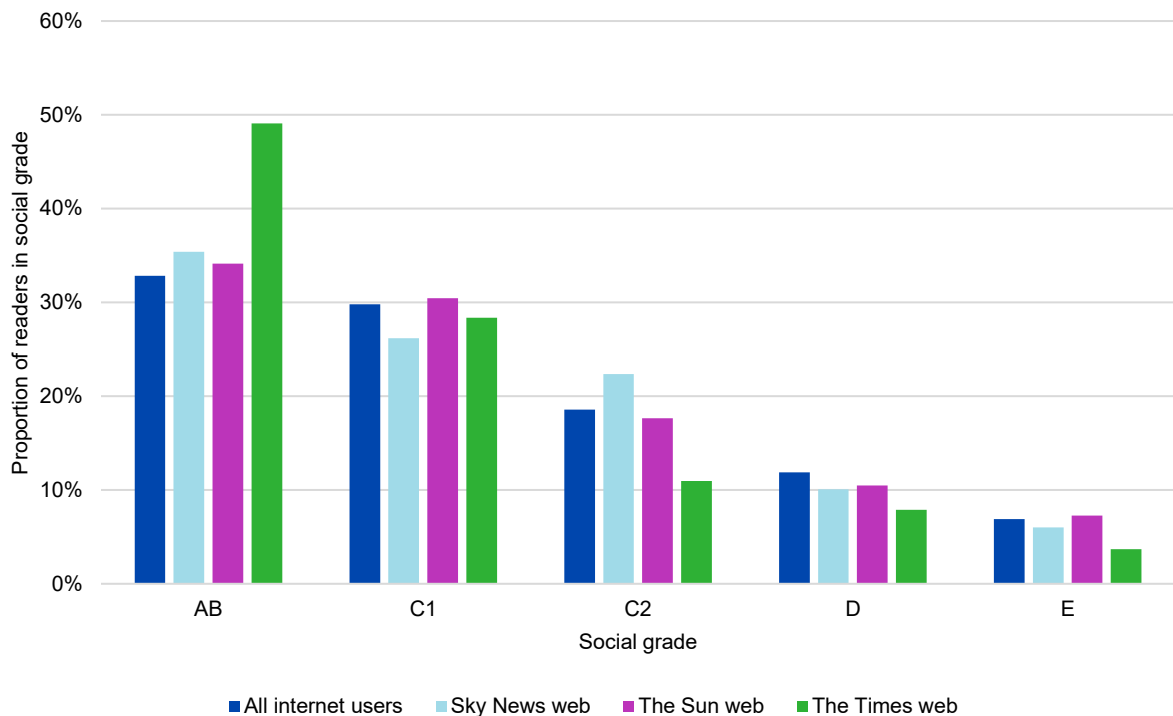
Source: NCS and BARB.

Base: all respondents (11,408)

Questions 5b, 5c of the NCS: *Thinking specifically about daily newspapers/weekly newspapers, which of the following do you use for news nowadays?*

Social grade ascribed by interviewer.

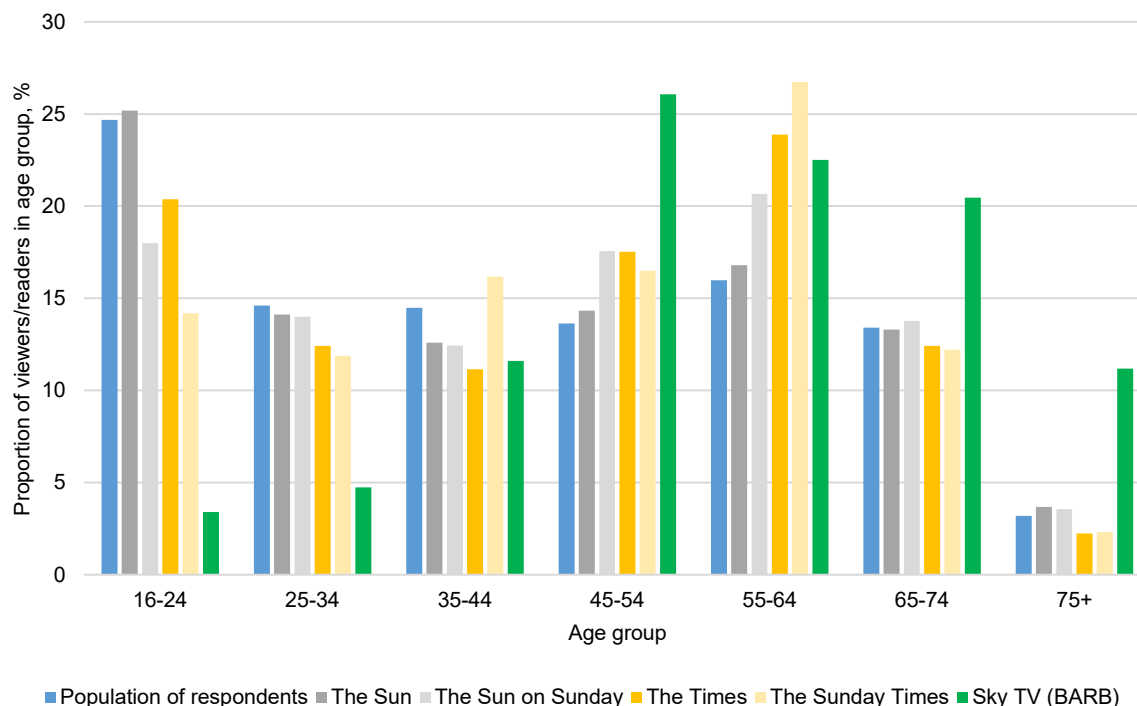
Figure 11.7: Proportion of online readers in each social grade



Source: CMA analysis of comScore MMX Multi-platform. The data relates to the following channels and subchannels on comScore: 'Sky News web' relates to the Sky News channel (which includes apps), 'The Sun web' relates to The Sun news subchannel and 'The Times web' relates to the Thetimes.co.uk channel (which includes apps) on comScore. Data is for UK, September 2017.

11.57 In terms of the age profile of the different news outlets, BARB data shows that Sky TV appears to attract an older demographic of customers compared to News Corp newspaper titles (Figure 11.8),³⁴² although its audience is younger online (Figure 11.9).

Figure 11.8: Proportion of readers/viewers in each age group



Source: NCS and BARB.

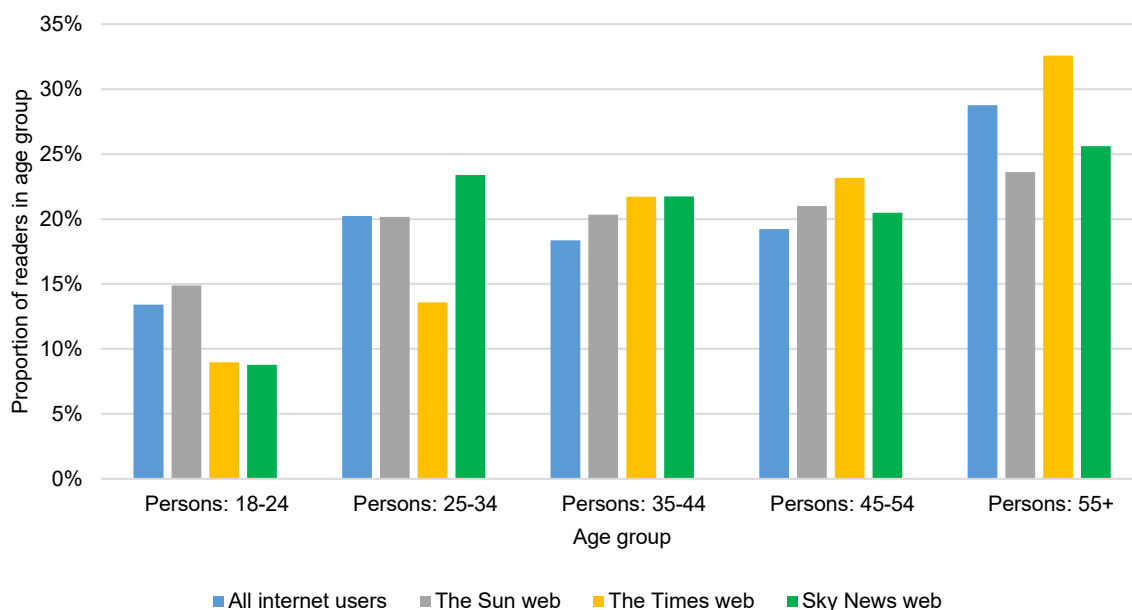
Notes: BARB data for Sky News is the average of the 12 months to November 2017.

Base: all respondents (11,408).

Questions 5b, 5c of the NCS: *Thinking specifically about daily newspapers/weekly newspapers, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*

³⁴² The NCS figures show that Sky TV consumption is younger than the newspapers'. In the main party hearing, Sky told us that [redacted] which was different from the NCS results. By using BARB data, which is an industry standard, we are better able to assess the TV audience of Sky News. Sky also highlighted [redacted].

Figure 11.9: Proportion of readers in each age group



Source: CMA analysis of comScore MMX Multi-platform. The data relates to the following channels and subchannels on comScore: 'Sky News web' relates to the Sky News channel (which includes apps), 'The Sun web' relates to The Sun news subchannel and 'The Times web' relates to the Thetimes.co.uk channel (which includes apps) on comScore. Data is for September 2017.

11.58 Overall, the analysis indicates that consumption of traditional news sources, including those controlled by the MFT (in particular, The Times), is higher among opinion formers, although this group appears to consume more news from a wider variety of sources. In addition, Sky News appears to have a more balanced social demographic audience than the News Corp titles (Sky News TV being used by an older population and Sky News online having a younger population). This indicates that the significantly increased control that the MFT will have over Sky News as a result of the Transaction will provide the MFT with an increase in an audience which is influential in itself (especially as older and more affluent demographics are more likely to vote) and with a broader demographic profile.

11.59 The MFT controls both tabloid and broadsheet newspapers, which in general appeal to different demographic groups, regardless of editorial position. Following the Transaction, it will also have greater control of Sky News which appeals to a further different demographic group, particularly online. The range of different demographic groups to which the MFT can reach is not replicated by any other media owner, except for the BBC, and is unlikely to be replicated in future. For example, the print titles of The Guardian and The Telegraph each appeal to the same respective groups, compared to the diverse groups to which The Times, The Sun and Sky News each appeal (see Appendix G for further detail).

Provisional conclusion on audience characteristics

11.60 In this section, we have found:

- (a) by giving it control over Sky News, the Transaction would significantly increase the MFT's audience reach;
- (b) the MFT already reaches a particularly influential audience through its broadsheet titles, and Sky News will add to this audience set; and
- (c) the demographic profile of Sky News viewers (particularly online) is different from that of either The Sun or The Times. The demographic analysis in this section indicates that the Transaction will increase the ability of the MFT to have influence over a different set of viewers compared with the News Corp titles. It also suggests that the demographic reach of the MFT's influence will be significantly wider than that of other news providers except the BBC.

11.61 We therefore find that, by increasing the MFT's control over Sky and Sky News, the Transaction will enable the MFT to have influence over a broader audience and wider range of demographics.

Impact of the Transaction on the MFT's ability to lead the news agenda

11.62 This section addresses the final way in which the MFT's control of media enterprises across each platform following the Transaction might amplify its influence: through enabling it to lead the wider news agenda. We first outline evidence on leading the agenda in the current media landscape, including how the growth of online news is affecting the ability of traditional news providers to lead the agenda. Second, we consider the likely impact of the Transaction on the MFT's ability to lead the news agenda, given the scale of its news gathering and production resources and its cross-media position.

How news providers can influence the wider news agenda

11.63 A news provider that leads the news agenda is one which can promote a particular issue beyond its immediate audience by having other news providers cover the same story. Some studies suggest that the more attention the media pays to an issue, the more likely the public is to recall it.³⁴³

³⁴³ See Rudd, C. (February 2016). *Effects of the media on citizens and politicians*. Published in *Politics and the Media*, ed. Geoff Kemp, Babak Bahador, Kate McMillan and Chris Rudd. Another study has suggested that media emphasis on particular issues within the general theme of immigration has led to immigration becoming of greater concern to the general public. However, evidence is limited. McLaren,

Therefore the ability of a news provider to raise an issue which is then covered by other news providers may be sufficient to indicate influence, not least because it can increase the number of people exposed to the story/issue (thus meaning that reach and consumption figures may understate a news provider's level of influence) and may ensure that stories are communicated through at least one trusted news provider (potentially meaning a news provider's level of influence is higher than that indicated by trust metrics).³⁴⁴

11.64 All news providers we asked indicated that they monitor other news providers and pick up stories originally covered elsewhere where they considered them verifiable and of interest to their respective audiences. For instance, the Editor of The Sun, Mr Gallagher, stated that Sky News was always on in The Sun newsroom as it was good for breaking news.

11.65 Ofcom's analysis considered the influence of newspapers on the news agenda, including that of the News Corp titles. Although finding that online-only providers, social media and intermediaries can influence the news agenda (in particular by 'breaking' news stories, focusing on stories not covered elsewhere or offering a fresh perspective), Ofcom concluded that traditional news providers retained much of their ability to shape the news agenda:

- (a) while they can influence the news agenda by breaking stories, online sources and social media often appeared to follow the agenda set by traditional news providers;
- (b) stories covered by newspapers are generally considered important to understanding the wider political landscape. For example, many news and current affairs programmes (both on TV and radio) feature segments setting out the stories covered by newspapers. These programmes include the Andrew Marr Show and Today, which have audiences of 1.6 million and 7.5 million respectively;³⁴⁵ and
- (c) Ofcom also noted arguments that well-resourced news providers engage in original news production and the more resources a news provider has, the more stories it will create that other outlets might pick up (and be less dependent on other outlets for stories). Ofcom also noted that

L., Boomgaarden, H. and Vliegenthart R. (January 2017). *News Coverage and public concern about immigration in Britain*.

³⁴⁴ The ability to lead the news agenda may also reflect the relative trustworthiness of news provider as other news providers will only likely follow up stories covered by trusted sources.

³⁴⁵ [Ofcom Public Interest Report](#), paragraphs 8.10 to 8.15.

intermediaries might increase the ability of existing brands to exert influence on the news agenda.³⁴⁶

11.66 We have considered whether any particular news provider, including Sky News and News Corp, are able to lead the news agenda. In assessing this, we consider the following:

- (a) studies on agenda leading;
- (b) whether online news availability and consumption dilutes the impact of mainstream media;
- (c) news production capability; and
- (d) the impact of cross-media ownership.

Studies on agenda leading

11.67 We primarily considered two studies which looked at the impact of news providers on the news agenda:

- (a) a Cardiff University study on intermedia agenda setting during the 2015 UK general election campaign;³⁴⁷ and
- (b) analysis on agenda leading submitted by the MRC.³⁴⁸

11.68 The Cardiff University study concluded that morning newspapers continued to share a similar agenda to the evening TV news bulletins during the 2015 general election, despite the increasing use of online news. The study found that the largest proportion of stories reported by newspapers before appearing on national TV news bulletins came from News Corp titles (23% overall; 16.3% from The Times/Sunday Times, and 6.7% from The Sun/Sun on Sunday). The next most influential was The Telegraph and Sunday Telegraph (20.2%). Despite being the largest newspaper group in terms of consumption (according to Ofcom's consumption metrics), DMGT was only the fourth most influential on this measure. The study also concluded that newspapers, particularly broadsheet titles, acted as opinion leaders, and identified what it concluded were clear moments during the 2015 campaign where TV news followed stories originating from newspapers.

³⁴⁶ [Ofcom Public Interest Report](#), paragraphs 8.17 to 8.18.

³⁴⁷ [Cushion, S., Kilby, A., Thomas, R., Morani, M. and Sambrook, \(April 2016\). R. Newspapers, impartiality and television news: intermedia agenda-setting during the 2015 UK general election campaign.](#)

³⁴⁸ See [Media Reform Coalition and Avaaz response to issues statement](#).

- 11.69 The MRC's analysis sought to assess whether national newspapers play a significant agenda setting role over TV news. Once stories had been filtered out to show a clear agenda leader, it found that, out of the 66 stories, 'News UK accounted for the highest share both in terms of the number of stories and levels of salience.'³⁴⁹ MRC said that 'These results are consistent with previous research showing that newspapers continue to play a dominant role in inter-media agenda setting.'
- 11.70 In summary, we consider that neither study was carried out over a long enough period of time for us to consider the results to be representative of the influence of particular news providers. Nor did they show the proportion of stories generated directly by news providers, which would likely dilute the significance of particular news providers.³⁵⁰
- 11.71 Nonetheless, we consider that these studies provide some indication that traditional news providers (whether through their established print or broadcast medium or online) together play a significant part in leading the news agenda. However, no single traditional news provider is particularly important in doing so. This was supported by a number of news providers who told us that, while they monitored other news providers for stories, no one news provider was considered particularly important in generating news stories.³⁵¹

Impact of online news on the impact of traditional news providers

- 11.72 In chapter 10 we found that traditional news providers do relatively well online in terms of reach and consumption. Traditional providers such as The Sun and Sky News also do relatively well in terms of engagement and presence on intermediaries. However, several news providers agreed with the proposition that online audiences could be more 'topic driven', particularly when accessing content through intermediaries.
- 11.73 Conversely, roughly 40% of those who use the internet for news, access the websites and apps of specific providers directly, in which case they are exposed to the hierarchy of stories selected by the news provider. Even though those who access content through intermediaries may be drawn to certain stories and topics initially, if they click on the links to go on to the news provider's website, they might see a further selection of stories picked by the news provider.

³⁴⁹ See [Media Reform Coalition and Avaaz response to the issues statement and the further submission from the Media Reform Coalition of 30 November 2017](#).

³⁵⁰ Our detailed analysis of these studies is in Appendix G.

11.74 A study by King's College London suggested that the news agendas of 'political influencers' on Twitter closely mapped that of the mainstream media during the 2015 general election.³⁵² The study suggested that 'political influencers may have been responding to the mainstream news agenda rather than leading it', though the responses of political influencers were frequently critical of the news agenda set by the mainstream media, often seeking to subvert it rather than reiterate or support it.³⁵³ This appears to be supported by another study which noted that:

though politicians and parties on Twitter do not seem to set the agenda of Twitter media users that often (38%), their discussions of particular news stories precede Web sites' news coverage in a (small) majority of cases (55%). This pattern suggests that political Twitter accounts may function as inspiration or source material for website news more often than that they directly influence 'other' actors' tweets.³⁵⁴

11.75 Overall, while the distribution of news online may have reduced the relevance of newspapers' front pages, it has not eliminated the ability of news providers to make choices on the prominence of news stories and lead the news agenda.

11.76 Fox suggested that the ability of individuals to communicate directly with the public via Twitter and other intermediaries meant that the overall influence of traditional media had declined. Since Ofcom's consumption share of reference figures only relate to news providers rather than individual commentators or politicians, the Parties suggested that the amount of influence that a media owner might have as a result of its share of reference had declined over time as other online sources had grown.

11.77 We recognise that the news media landscape is changing rapidly, in that Twitter and other intermediaries allow politicians and others to communicate directly with the public rather than having to go through traditional news providers, and that this may lessen concerns about mergers of traditional news providers in the future. However, the evidence that we have seen suggests that traditional news providers currently remain influential in leading

³⁵² Moore M., Ramsay G. (October 2015). *UK Election 2015 - Setting the agenda*, Centre for the Study of Media, Communication and Power with support from the Media Standards Trust, the Policy Institute at King's and Ebay. Inc.

³⁵³ The research identified 309 political influencers on Twitter based on criteria including: number of followers, number of accounts followed, Klout score, and frequency and content of tweets.

³⁵⁴ Harder, R.A., Sevenans, J. and Van Aelst, P., *Intermedia agenda setting in the social media age: how traditional players dominate the news agenda in election times*, The International Journal of Press/Politics, 28 April 2017.

the news agenda, given that, as we set out in chapter 10, they continue to provide the bulk of the news content consumed online.

News production capability

11.78 Third parties have suggested that the financial strength and resources devoted to news production are relevant factors to consider in order to assess influence, and which may have an impact on the ability to lead the news agenda (ie to consistently generate stories a certain level of resourcing is required). In particular, Ed Miliband et al points out that the decline in original news production is linked to the decline in the resources that news providers are able to muster. They note that the MFT remains one of the best resourced news providers and that the Transaction will boost its position relative to other news providers.³⁵⁵

11.79 Table 11.1 sets out the costs and staffing for major news providers in 2017.

Table 11.1: Costs and staffing for major UK news providers, 2017³⁵⁶

News title	Staff numbers		Costs (£m, per year)	
	All	Editorial	All	Editorial
Bauer³⁵⁷	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BBC	[REDACTED] ³⁵⁸	[REDACTED]	[REDACTED] ³⁵⁹	[REDACTED]
BuzzFeed	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Channel 4^{360,361}	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Channel 5³⁶²	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Daily Mail	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Daily Mirror³⁶³	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Evening Standard	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Financial Times	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Global³⁶⁴	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Guardian	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Independent	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ITN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ITV³⁶⁵	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

³⁵⁵ Ed Miliband et al, [Response to the issues statement](#), page 43 and 44.

³⁵⁶ We requested data for 'the last year.' The precise time period of data supplied by third parties varies.

³⁵⁷ [REDACTED].

³⁵⁸ [REDACTED].

³⁵⁹ [REDACTED].

³⁶⁰ [REDACTED].

³⁶¹ [REDACTED].

³⁶² [REDACTED].

³⁶³ [REDACTED].

³⁶⁴ [REDACTED].

³⁶⁵ [REDACTED].

Metro	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Northern and Shell³⁶⁶	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sky News	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Telegraph	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
The Sun	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
The Times	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: The Parties and third parties.

11.80 We discuss these figures, along with other relevant information from all major UK news providers as to the costs of their news gathering activities, and the number of full time staff that they engage in news gathering activities in Appendix H.

11.81 Based on this information, we estimate that there are 12 media outlets, which equate to ten different media organisations, with more than 400 editorial staff.³⁶⁷ Some of the smaller players appear to be able to influence the news agenda, even though their news production resources are lower than others. For example, we have evidence that a number of stories from BuzzFeed, a newer online-only news provider, were picked up by other news providers.³⁶⁸ We also note in Appendix H that there appears to be little correlation between the number of staff employed by an organisation and its reach. Nonetheless, the traditional news providers that appear more able to lead the news agenda are also those with the greater resources. It is reasonable to conclude that they will do so on a more consistent basis.

11.82 Overall, we therefore agree that editorial and journalistic resource is important in allowing news providers to have a sustained level of influence, and the traditional news providers retain the largest resources. We do not however find that News Corp or Sky News have disproportionately larger resources than other traditional news providers. We nonetheless note that the combined resources of Sky News and News Corp means that the MFT controls more news resources than any other person with control of media enterprises, apart from the BBC. Further, it would be difficult for another person with control of existing media enterprises to match this level of resources, or for a new entrant to do so with a media brand that is trusted and has equivalent reach.

³⁶⁶ [REDACTED].

³⁶⁷ BBC included in this number.

³⁶⁸ Fox notes that 'The Evening Standard ... is nonetheless influential in national news, both because of its own substantial readership and because most other news outlets are based in London and so their editors and journalists see it regularly. During the 2017 election [...] the Telegraph published over 50 articles mentioning the Evening Standard.' (Fox's initial submission, page 22, Annex 2).

Impact of cross-media ownership on ability to lead the news agenda

- 11.83 We have also considered whether the MFT's control of media enterprises across each platform, which is increased as a result of the Transaction, might enhance its ability to lead the wider news agenda.
- 11.84 As noted in paragraph 11.71, traditional news providers (whether on their established print or broadcast medium or online) together play a significant part in leading the news agenda. The relationship between newspapers and TV broadcasters can be particularly important in this regard – for example TV news broadcasters often report on newspaper stories and vice versa. Having control of news outlets across multiple platforms could therefore increase the likelihood that a particular story could lead the wider news agenda of other news providers.
- 11.85 Further, as we noted in paragraph 11.39b, TV news tends to be more trusted than newspapers, and so the ability to promote a particular story previously run in newspapers will have a significant effect in terms of amplifying the influence that story has. A number of third parties made observations indicating the importance of TV news and how this could potentially amplify news stories. For example, Mr Gallagher stated that getting a story broadcast on the nightly news would increase the chances of people buying the newspaper that broke the story the next morning; and one non-broadcast online news provider told us about how it partnered with a TV news provider to amplify the impact of its investigative journalism.³⁶⁹
- 11.86 We also note Lord Falconer's comment that 'the thing that really absorbs politicians is how does the 6 o'clock and the 10 o'clock news on the BBC and the ITV cover things' while the special advisers that responded to our questions stated that politicians very much focus on TV and value the audience it provides.
- 11.87 Baroness Greender, previously acting Deputy Director of Communications for the government, stated that:

It would be a mistake in this context to separate the media into distinct categories. If a tabloid has dwindling circulation, but has a sensationalist headline which is reviewed on broadcast news or a highly controversial columnist who has a significant social media following, then it has already reached a far wider audience. Broadcast news spends a great deal of time interviewing print

³⁶⁹ An online news provider partnered with the BBC over a number of stories to amplify their impact and commented that it would 'sometimes [...] hold a story in order to partner with a broadcaster to amplify something'.

journalists as part of their programming – and expect them to be more outspoken than their own presenters or reporters. We would often give keynote interviews to the Independent on Sunday in spite of their poor circulation [...] [who] would probably put the story on the front page, that would get an airing on the all-important Sunday political programmes, which would in turn get good follow-up coverage in all the daily papers on the Monday.

11.88 DMGT noted the increasing importance of video online, and how access to Sky News’s video feed may provide a ‘big advantage’. In relation to this, we note [redacted].³⁷⁰

11.89 Considered alongside the evidence set out earlier on how traditional news providers can lead the news agenda, we agree that cross-media ownership creates greater scope to lead the wider news agenda. It is difficult to assess the magnitude or likelihood of this effect because of the absence of UK examples of current cross-media ownership. However, we consider that it is reasonable to conclude that a person with control of media enterprises across platforms would, if it chose to, be able to use this position to amplify its influence over the news agenda.

11.90 The Parties submitted that the differences between TV and newspapers mean that it would not be possible to follow an aligned or integrated cross-platform approach. For example, Sky told us that:

The stories are told in very different ways. Their approach is in completely different ways. If you looked at the front page of The Times this morning there are stories about a potential deal on the border in Ireland, which is an ongoing issue, and that is a story that is made up of completely off the record quotes. You could not tell a story like that on TV. We would need to interview people and have people talking to camera, and visual elements to demonstrate the story. We would come at stories from completely different ways so those kind of synergies do not really exist.

11.91 We agree that there are likely to be limits on the synergies between platforms (at least between newspapers and TV).³⁷¹ However, we do not think that these differences mean that the control of media enterprises across different platforms cannot confer increased influence. The very fact that news stories

³⁷⁰ Based on our analysis of a selection of [redacted] over the period 01/01/17- 22/10/17.

³⁷¹ There is clearly already significant sharing of resources and material between TV/newspapers and their online operations. For example, Sky News TV video content is used online; and stories from The Times can be accessed through The Times website.

are likely to be told in different ways on TV compared with in newspapers or online means that they can be attractive to different audiences, and could be influential in different ways. These impacts do not rely on the same news content being shared between platforms, or the same editorial staff being involved.

11.92 Further, we note that some News Corp Australia journalists appeared on ANC (Sky News Australia) TV programmes as guest commentators, including before the acquisition of ANC by News Corp Australia. A News Corp Australia internal memo recommending the acquisition [redacted]. News Corp also told us that [redacted].³⁷² This indicates that some sharing of staff and content is clearly possible between print newspapers and TV news. While the requirements of Australia's broadcasting regulations are different from those in the UK, the Broadcasting Code would not prevent similar sharing between print and TV news from occurring in the UK.

11.93 We therefore consider that the increased control the MFT will have over Sky and Sky News and the fact that it controls news providers across different media platforms will increase the ability of the MFT to lead the news agenda. We further note that it will be difficult for any other media owner to gain similar influence across different media platforms, given that Sky News is the only 24-hour news channel apart from BBC News 24.

Provisional conclusion on the MFT's control of media enterprises across each platform

11.94 Traditional news providers remain the most influential in leading the news agenda, although there is no one news provider which has overriding importance in this context.

11.95 The cross-media nature of the Transaction will allow the MFT through its increased control over Sky News to reach and influence a broader range of the population. This will give it an increased ability to utilise the different ways that each media platform can influence public opinion and potentially take advantage of the synergies and interactions between different media platforms, which could in turn increase its ability to lead the news agenda.

Evidence of the MFT's influence over the political agenda

11.96 The impacts of the Transaction outlined earlier add to the MFT's existing influence over public opinion and the political agenda, as exercised in

³⁷² See Appendix J for more detail.

particular through the News Corp titles. We now analyse evidence on the ability of the MFT to influence the political agenda. For context, we start with the Leveson Inquiry and then assess quantitative evidence on meetings with government ministers. Finally we consider qualitative evidence from those currently or previously involved with the political process.

The Leveson Inquiry

- 11.97 The Leveson Inquiry was set up in 2011 following the phone hacking scandal to investigate the culture, practices and ethics of the press. The terms of reference for the inquiry specifically included ‘contacts and the relationships between national newspapers and politicians, and the conduct of each.’³⁷³
- 11.98 While the overall purpose of the Leveson Inquiry was different to that of this Inquiry, and in terms of its assessment of influence it was focused more on the press rather than the media as a whole, we nonetheless consider that the Leveson Inquiry’s conclusions in relation to the closeness of the press and politicians are clearly relevant to the question of media influence and therefore to our assessment.
- 11.99 Over the course of 16 months, the Leveson Inquiry heard from 337 witnesses and received 287 written submissions of evidence (not including over 1,000 submissions sent in via email). Those who provided evidence directly relevant to the matter of the relationship between the press and politicians (and which would thus be relevant to this inquiry) included the then Prime Minister and his predecessors, past and present senior Conservative, Labour and Liberal Democrat MPs, senior civil servants (including press secretaries and the then Cabinet Secretary and Head of the Civil Service), print and TV journalists, and owners of UK media (including Rupert Murdoch and James Murdoch).
- 11.100 We consider the size and scope of the Leveson Inquiry to be comprehensive in terms of examining the relationship between the press and politicians. It provides a reasoned and evidenced context about media influence from which to start our analysis and important context about how press influence (and therefore media influence as a whole) operates in the UK.³⁷⁴ 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

³⁷³ [The Leveson Inquiry Terms of Reference](#). Note that the Leveson Inquiry was also specifically required to make recommendations for a more effective regulatory regime which supported, among other things, the plurality of the media and how future concerns about cross-media ownership should be dealt with.

³⁷⁴ Ofcom’s conclusion at phase 1 that Rupert Murdoch, and potentially other members of the MFT, already have a degree of influence over the political agenda was partially based on the findings of the Leveson Inquiry (see Ofcom Public Interest Report, paragraph 8.36).

politicians undertaken by the Leveson Inquiry as a starting point for our own assessment.

11.101 On the matter of the relationship between the press and politicians, the Leveson Inquiry concluded:

- (a) politicians spent a surprising amount of time, attention and resource on the relationship with the press in comparison and at the expense of other areas;³⁷⁵
- (b) this should not be interpreted as concluding that politicians have made express or implied deals with press proprietors but there are legitimate perceptions and concerns that politicians and the press have traded power and influence;³⁷⁶
- (c) some press leaders have been powerful and effective lobbyists for their interests;³⁷⁷
- (d) the press campaigns on particular subjects on the basis that it is representing the views of its readers, but that this may have carried more weight in political circles than it strictly merited as a matter of evidence of public opinion;³⁷⁸
- (e) the press holds powerful weapons of a public megaphone and extensive behind the scenes access;³⁷⁹ and
- (f) the national press uniquely offers ‘attractively packaged and actively mediated political partisanship’, and so politicians are motivated to get a quantifiable outcome from their investment in relationships with journalists, in the form of new information, political and policy support, or the enhancement of personal reputation and profile.³⁸⁰

11.102 In summary, the Leveson Inquiry concluded:

Taken as a whole, the evidence clearly demonstrates that, over the last 30 to 35 years and probably much longer, the political parties of UK national government and of UK official opposition, have had or developed too close a relationship with the press in a way which has not been in the public interest. In part, this has

³⁷⁵ [Leveson Report](#), Part I, Chapter 8, paragraph 3.6.

³⁷⁶ [Leveson Report](#), Part I, Chapter 8, paragraph 3.8.

³⁷⁷ [Leveson Report](#), Part I, Chapter 8, paragraph 3.19.

³⁷⁸ [Leveson Report](#), Part I, Chapter 8, paragraph 3.21 and 3.22.

³⁷⁹ [Leveson Report](#), Part I, Chapter 8, paragraph 3.29.

³⁸⁰ [Leveson Report](#), Part I, Chapter 8, paragraph 3.32 and 3.33.

simply been a matter of spending a disproportionate amount of time, attention and resource on this relationship in comparison to, and at the expense of, other legitimate claims in relation to the conduct of public affairs. In part, it has been a matter of going too far in trying to control the supply of news and information to the public in return for the hope of favourable treatment by sections of the press, to a degree and by means beyond what might be considered to be the fair and reasonable (albeit partisan) conduct of public debate.³⁸¹

11.103 We note in particular the conclusions of the Leveson Inquiry, based on extensive evidence gathering, that some press leaders have been powerful and effective lobbyists for their interests and that there are legitimate perceptions and concerns that politicians and the press have traded power and influence. Further, we also give weight to the Leveson Inquiry's findings regarding Rupert Murdoch's influence on politicians, including:

In their discussions with him, whether directly or by proxy, politicians knew that the prize was personal and political support in his mass circulation newspapers. The value or effect of such support may have been exaggerated, but it has been treated as having real political value nonetheless.³⁸²

Meetings with ministers

11.104 The Parties submitted that '[t]here is nothing to suggest [that access is a good indicator for the ability to leverage editorial control into political influence]'.³⁸³ Sky said that it 'does not consider this data [on ministerial visits] to be at all probative of influence' and that such data 'is not capable of shedding any light on the statutory question which the CMA is charged with answering.'

11.105 However, although it is an imperfect measure, we consider that, other than direct evidence of influence such as records of discussions, meetings between government ministers and media owners provides an indicator of the degree of influence that media owners may have over the political agenda and the degree to which that influence is spread between different media

³⁸¹ [Leveson Report](#), Executive Summary, paragraph 26.

³⁸² [Leveson Report](#), Part I, Chapter 8, paragraph 2.9.

³⁸³ See [Fox submission of 8 November 2017](#), [Robert Kenny critique of MRC submission](#), page 39.

owners.³⁸⁴ We note here the comment by Lord Justice Leveson that direct evidence of ‘quid pro quo’ would be unlikely:

It is the ‘without having to ask’ which is especially important here. Sometimes the very greatest power is exercised without having to ask, because to ask would be to state the blindingly obvious and thereby diminish the very power which is being displayed. Just as Mr Murdoch’s editors knew the basic ground-rules, so did politicians. The language of trades and deals is far too crude in this context.³⁸⁵

11.106 Our analysis looked at meetings in the period January 2015 to June 2017 between the Prime Minister, Treasury, Cabinet Office, BEIS, Home Office and Ministry of Justice (MoJ) and persons with control of media enterprises and their representatives. We had originally included meetings between DCMS ministers and media enterprises in our analysis. However, a number of meetings between DCMS ministers and Sky were part of industry forums and the BBC Charter renewal was likely to have led to significantly more meetings between DCMS ministers and the BBC. We therefore consider that including DCMS figures in our overall analysis risked giving a distorted view of the significance of different media organisations.

11.107 We found that Rupert Murdoch and News Corp representatives³⁸⁶ met with ministers significantly more than any other media enterprises (see Figure 11.10).³⁸⁷ When considering meetings just with the Prime Minister, Rupert Murdoch and News Corp representatives had 26 meetings over the period.³⁸⁸ The next closest media enterprise was the BBC, with 11 meetings.

³⁸⁴ We recognise that meetings between politicians and media organisation may reflect the desires for the media to talk to politicians as well the desire of politicians to meet and influence the media.

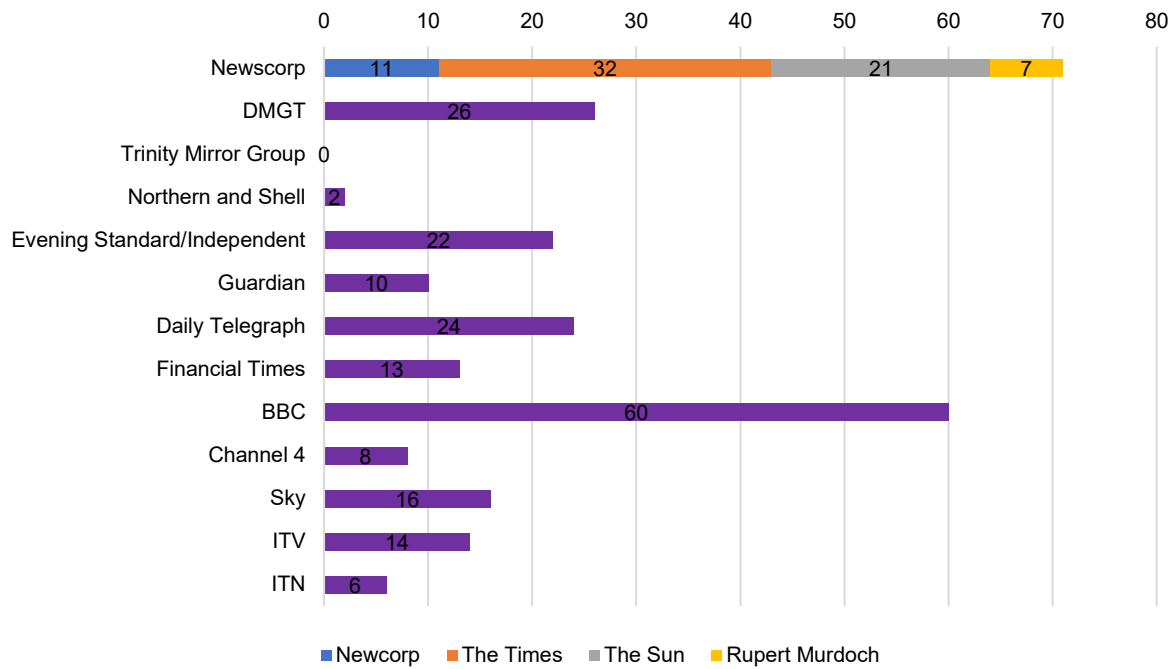
³⁸⁵ [Leveson Report](#), Part I, Chapter 8, paragraph 2.9.

³⁸⁶ This includes staff of their papers.

³⁸⁷ After June 2016, the number of meetings between ministers and media organisations reduced, although this may also be explained by the significant changes in ministers after the EU referendum.

³⁸⁸ Of the 26 meetings with the Prime Minister, 18 were in the period January 2015 to June 2016 and eight were in the period July 2016 to June 2017.

Figure 11.10: Total meetings between ministers and media enterprises (January 2015 to June 2017)

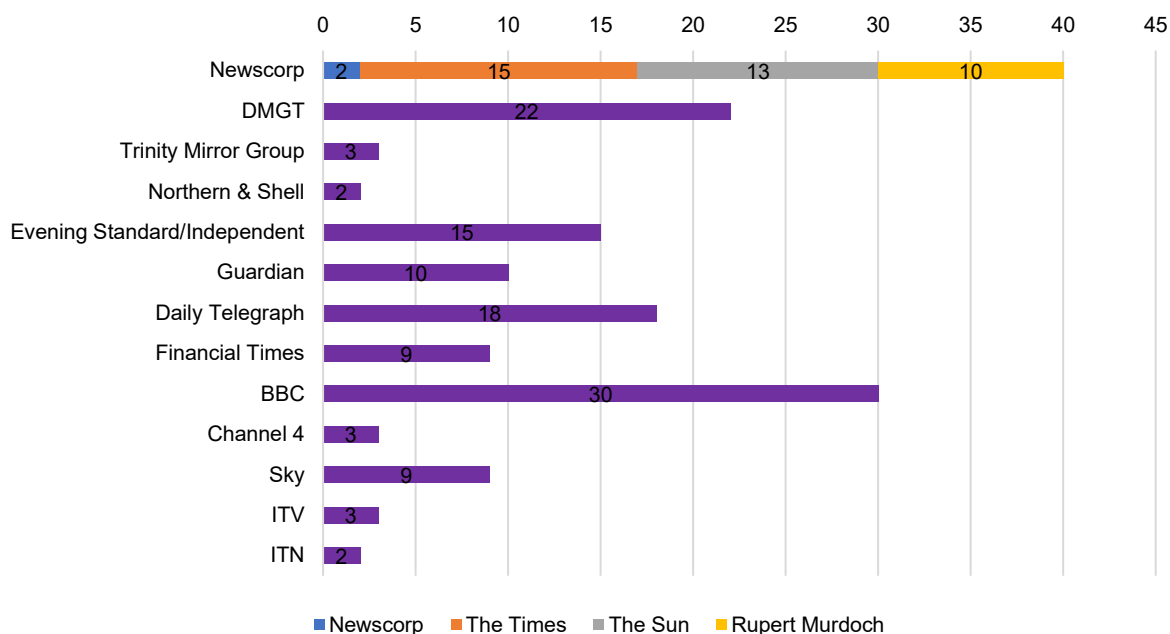


Source: Departmental returns on gov.uk of ministerial gifts, hospitality, travel and meetings.
 Notes: Meetings with Rupert Murdoch are counted separately to meetings with News Corp. Where he is representing News Corp, this is only counted in his meetings.

11.108 The pattern observed in meetings with government ministers was similar when we consider hospitality. Where ministers accepted hospitality from Rupert Murdoch and News Corp representatives more than any other media enterprise (see Figure 11.11).³⁸⁹

³⁸⁹ Hospitality offered involves dinner, drinks receptions, and tickets to events such as awards ceremonies or concerts among others. It does not include offers that were declined

Figure 11.11: Total hospitality between ministers and media enterprises (January 2015 to June 2017)



Source: Departmental returns on gov.uk of ministerial gifts, hospitality, travel and meetings.

Notes: Meetings with Rupert Murdoch are counted separately to meetings with News Corp. Where he is representing News Corp, this is only counted in his meetings.

11.109 This analysis does not tell us directly whether Rupert Murdoch or News Corp had greater opportunities to access ministers as we do not have the number of meeting invitations sent to other media enterprises which were declined.³⁹⁰ Nor do we know what was discussed at these meetings or who instigated the meetings. We also recognise that this evidence does not directly tell us whether Rupert Murdoch, or other persons with control of media enterprises, have influence over politicians or the political agenda.

11.110 The Parties disagreed with the significance of the results and submitted that the results are not as stark as they appear at first:

- (a) Fox argued that there is no evidence the News Corp attendees at each meeting were following instructions from the MFT (Fox submitted this would be a highly implausible assumption);
- (b) Fox stated that the variety of titles operated by News UK, which are subject to editorial independence (including as a result of The Times undertakings) explains the larger number of meetings;³⁹¹

³⁹⁰ The analysis does not cover all contact between ministers and media organisations as it does not include emails or phone calls, for example.

³⁹¹ Fox told us that 'if anything it serves to evidence the substantial degree of internal plurality and editorial independence between the News UK titles. A reasonable interpretation of the fact that politicians have separate meetings with The Sun and The Times is that they see them as independent titles. If politicians believed that the

- (c) Sky argued that the data does not take account of industry forums or roundtables with multiple stakeholders, introductory meetings with ministers or meetings to discuss Sky's broadband business; and
- (d) Fox argued that the analysis shows that the Lebedev owned titles (The Evening Standard and The Independent) had a number of meetings comparable to DMGT and substantially higher than The Guardian. This implies that the Lebedev owned new providers have similar influence to The Daily Mail/Mail on Sunday, and substantially more influence than The Guardian, which would indicate caution regarding the value of this evidence.

11.111 We recognise that News Corp has more national titles than other organisations and that therefore there may naturally be a larger number of meetings with News Corp titles. However, we consider that this goes to our argument that the larger number of media enterprises owned confers greater influence. If all newspapers in the News Corp group are aware of the MFT agenda (as we note in chapter 7, Rupert Murdoch has over time been in regular contact with his editors and discusses his views with them) then more meetings may be indicative of a greater opportunity for the MFT to exert influence even without explicit instruction. Further, we note that individually, The Times/Sunday Times meetings are higher in number than other newspaper groups.³⁹²

11.112 In relation to Sky's arguments, we recognised that some meetings may be industry roundtables. We found this to be particularly the case with meetings between Sky and DCMS ministers, and therefore have excluded DCMS from the analysis (which we consider also addressed their points regarding introductory meetings and meetings to discuss broadband).³⁹³ However, for Sky we found five other roundtables³⁹⁴ and for News Corp, we found only one roundtable.³⁹⁵ We therefore consider that overall, the figures mentioned earlier are an accurate reflection of the relative access of each media organisation to government ministers.

titles follow a unified editorial line dictated by Rupert Murdoch, then, on the hypothesis that the meetings are explained by efforts to seek favourable coverage, one would expect a larger proportion of the meetings to be with him, not with the individual titles' employees.'

³⁹² The Parties have also noted that The Times and Sunday Times are separate titles with their own editorial teams. While we recognise this, our approach has been similar with other newspaper groups (of the 32 meetings between Ministers and The Times newspapers, 24 were with The Times and eight were with The Sunday Times). Further, the public interest test covers the plurality of media owners and we therefore consider aggregating titles by owner is appropriate.

³⁹³ See paragraph 11.106.

³⁹⁴ Four with BEIS and one with HMT. A Sky News journalist also attended one meeting with the Prime Minister where a Sunday Times journalist was also present

³⁹⁵ A roundtable at BEIS to discuss the Digital Single Market. There were also three other meetings where a News Corp title attended a meeting with one another media organisation present.

11.113 With respect to the relative influence of different media groups, we note that the number of meetings between Ministers and Rupert Murdoch and News Corp representatives is over double the number of meetings with any other media organisation, other than the BBC, which shows the potential for greater influence.³⁹⁶ The analysis also demonstrates that there are relatively few news providers meeting with ministers, and new online providers such as BuzzFeed and HuffPost do not appear.

11.114 While we disagree with the Parties' comments on the relevance of this evidence, we have also considered further, qualitative evidence on influence over the political agenda to help put this analysis in context.

Qualitative evidence on political influence

11.115 Lord Falconer told us that we 'should be under no illusions about how absorbed politicians are [by the media]'.³⁹⁷ We heard from a number of third parties that are or were involved in the political process on why politicians meet with the media and which media organisations are the most influential.

11.116 A detailed summary of the responses is set out in Appendix K. Here we set out the main themes and conclusions. We consider that these views indicate that politicians remain principally concerned with the traditional news providers and that, reflecting the numbers in our analysis of the meetings above, those news providers controlled by the MFT already play a significant role.

11.117 A number of third parties highlighted how the media continued to play an important role in enabling politicians to ensure that policies and proposals were positively received by the public – 'politicians and their advisers are open and available to a wide range of reporters because that is one of the ways of getting across their achievements or explaining their failures to a greater audience.'³⁹⁸

11.118 The focus on messaging meant that audience size was generally considered to be indicative of importance. Politicians and advisers were 'concerned about media outlets broadly in proportion to the size of their audience'³⁹⁹ and were 'motivated to talk to and influence publications and outlets with the greatest number of readers (aka potential voters)'.⁴⁰⁰ As such, those

³⁹⁶ We note that The Guardian has fewer meetings than many of the other newspaper groups, however we consider this is likely to reflect the fact that the government in the analysis period is predominantly Conservative.

³⁹⁷ [Transcript of hearing with politicians.](#)

³⁹⁸ Baroness Greender.

³⁹⁹ Former senior political adviser [REDACTED].

⁴⁰⁰ Former senior political adviser [REDACTED].

organisations with the highest audience reach were seen as the most important (and influential) news providers.

11.119 Consequently, a number of third parties indicated that the BBC was the most influential media organisation, and ITV's news bulletin was also mentioned. One told us that the free-to-air news bulletins (such as ITV and Channel 4) were particularly important as they 'pick up viewers watching other programmes', while another said that 'the biggest cut-through was via TV, particularly the 6.00pm and 10.00pm BBC and ITV news bulletins as it was and still is one of the few occasions when there is a single mass audience for current affairs and political commentary'.⁴⁰¹

11.120 However, some of these third parties noted that TV news was nonetheless dependent on the agenda led by newspapers. For example, one told us that 'The BBC, despite its very broad reach is sometimes compromised by its reliance on newspaper agendas and commentators',⁴⁰² and Lord Falconer stated that 'the newspapers set the agenda for the radio and the TV.'⁴⁰³ Others, such as the Rt. Hon Ed Miliband and the Rt. Hon Kenneth Clarke went further and suggested that newspapers were still the key news providers that politicians were concerned with (Mr Clarke noted that 'political leaders are obsessed with newspapers'). In particular, former Prime Minister Gordon Brown expressed a view that

[N]ewspaper coverage remains central in setting the media agenda for the day, despite declining circulation numbers [...] All recent evidence is that the Murdoch Group have not changed [...] trying to influence voters and the general public to support causes that may be of commercial benefit, as well as political benefit to their company.

11.121 Similarly, former Prime Minister Sir John Major expressed a view that the confrontational nature of the British political system meant that the media was able to shape the political agenda 'especially [...] if an original report is picked up by a large number of other media outlets. When this occurs a perfect storm can be created out of very little' and that

the media can, and does, set the political agenda, not least through the 'slant' they give the news. [...] In this fashion newspapers can:

⁴⁰¹ Baroness Gabrielle Bertin, previously Director of External Relations at No.10.

⁴⁰² Baroness Grender.

⁴⁰³ [Transcript of hearing with politicians.](#)

- (i) set the agenda – even a partisan agenda;
- (ii) undermine or support political parties and/or their policies;
- (iii) advance or damage the individual career or reputation of anyone in the public eye.

It is noticeable that ‘friendlier’ coverage is given to those who share the convictions of the newspaper itself – sometimes coverage is shamelessly partisan.

11.122 The Sun, The Times and The Daily Mail were highlighted as influential newspapers, both in terms of concern with regards to politicians and influencing the political agenda. For example, The Times’ role in adoption reforms and The Daily Mail’s role in the introduction of the plastic bag levy were noted as clear examples of the ability for newspapers to successfully campaign on issues. In particular, Ed Miliband MP indicated that newspapers controlled by the MFT were still particularly influential, noting that:

In October 2015, after the Conservatives won the general election, The Sun, rather surprisingly, decided to launch a campaign against George Osborne's changes to the Tax Credits. These changes had been around for some time. Within a month he had changed his policy. I am not saying it is simply because The Sun did it, but choosing to highlight an issue, choosing to drive the issue through the public agenda, definitely has an impact on people's perceptions and the salience of that issue.⁴⁰⁴

11.123 Sir John Major also noted that

I do know that some who oppose it have kept silent for fear of subsequent hostile press coverage in the existing Murdoch titles. One said to me ‘I know this is not heroic, but it is prudent’. Whether justified or not, the very fact that such a fear exists suggests the present power of the Murdoch media is already too great.

11.124 In summary, we consider that the qualitative evidence reinforces the quantitative evidence on ministerial meetings. While social media and online sources may be growing in importance, it seems clear that the traditional news providers remain the most influential (and as we note in chapter 10,

⁴⁰⁴ [Transcript of hearing with politicians.](#)

traditional news providers provide the bulk of the news content consumed online). In particular, traditional news providers continue to play an important role in the presentation and acceptance (or otherwise) of policy, a role which we consider important enough to provide persons with control over such media owners enterprises with influence over the political agenda, and we do not yet see the emergence of any new online news providers to counterbalance this.

- 11.125 Of the traditional news providers, the BBC and news sources currently controlled by the MFT are highlighted as being particularly important (although there is also mention of the ITV news bulletin and The Daily Mail).

Provisional conclusions on political influence

- 11.126 In this section, we found that traditional news providers continue to play a key role for those in the political process such that the persons with control of those news providers have the largest influence over the political process. In that context, the evidence shows that the news providers controlled by the MFT have particularly significant influence, with only a small number of other news providers also having this kind of influence.

Provisional conclusion on influence over public opinion and the political agenda

- 11.127 The evidence we have gathered suggests 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 have one of the highest circulation and readership figures of any of the newspaper groups, and that readership covers a broader range of demographics than any other media enterprise involved in the supply of newspapers. News Corp newspapers also have a significant online presence.
- 11.128 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, we have noted that members of the Murdoch family and representatives of News Corp have met with government ministers more frequently than other media owners over the past two and a half years.
- 11.129 Studies on leading the news agenda show that, even though the reach of print newspapers has been declining, the News Corp newspapers (along with other major national newspapers) still have a significant impact on the wider news agenda, including the stories that are carried by TV and radio broadcasters.

- 11.130 There is some evidence to suggest that new online-only news providers can sometimes lead the news agenda and are beginning to be seen as important in influencing the political agenda. However, we consider that it is the traditional news providers that do this on a consistent basis and, due to their resources, this is likely to continue to be the case for the foreseeable future.
- 11.131 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 major news providers across all four platforms – TV, print newspapers, online and radio.
- 11.132 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:
- (a) 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 also provisionally found that the Transaction would significantly increase the extent of control that the MFT is able to exercise over Sky News, which has the potential for increased editorial alignment with News Corp titles (for example, by taking a similar approach on specific topics or issues, pushing certain stories or downplaying others);
 - (b) second, Sky News is highly trusted, like the other main UK TV news broadcasters, which means its influence is likely to be greater than its reach and consumption figures indicate;
 - (c) 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 one of the News Corp newspapers. This would allow the MFT to influence the views of a significantly wider audience and different demographic groups;
 - (d) finally, the ability to repeat on Sky News stories previously covered in the News Corp newspapers (and vice versa) could have an amplification effect beyond that indicated by consumption measures (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.

- 11.133 This cross-media presence across radio, online, newspapers and TV is not matched by any other person with control of media enterprises. In particular, we note that Sky News is one of only two UK-focused 24-hour news channels.
- 11.134 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 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.
- 11.135 Given this context, we consider that the Transaction will give the MFT a unique position from which to influence the news agenda.
- 11.136 Overall, we provisionally find that the Murdoch family, through the MFT will be able to exercise a significantly increased level of control over Sky and Sky News as a result of the Transaction. This would enable the MFT to exercise materially greater influence over public opinion and the political agenda through Sky and Sky News. This would add to the MFT's already significant influence over public opinion and the political agenda through its control of the News Corp titles.

12. Assessment of sufficiency and provisional finding on media plurality consideration

Context for assessing whether plurality will remain sufficient

- 12.1 The media plurality consideration is at its heart a protection that seeks to guard against 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.
- 12.2 When the media plurality consideration was introduced into the Communications Bill 2003, Lord McIntosh as the then parliamentary Under-Secretary of State for Broadcasting at DCMS, stated that: 'Media plurality is

important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any one person to control too much of the media because of his or her ability to influence opinions and set influence the political agenda'. Similarly, when considering amendments to media regulation at the time of consulting on changes to media ownership rules in 2001, the government stated that 'plurality is not about content but the source of that content, the "voice" behind it – the owner' and that, among other things, 'a plurality of voices should... prevent the emergence of any one source able to control the news agenda by the inclusion/omission of particular stories'.⁴⁰⁵

- 12.3 In our view, these statements reflect the concerns which underlie the media plurality consideration. In this context, we are tasked with considering whether the Transaction is likely to result in there being an insufficient plurality of persons with control of the media enterprises serving audiences in the UK.
- 12.4 In the previous chapters we have considered whether there would be a change in the level of control exercisable by the MFT over Sky and Sky News as a result of the Transaction, and what impact this might have on the diversity of viewpoints and the ability of the MFT to influence public opinion and the political agenda. We have provisionally concluded that, as a result of the Transaction:
- (a) 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
 - (b) this significant increase in control has the potential to lead to a material reduction in the diversity of the viewpoints that are consumed 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.
- 12.5 In reaching these provisional conclusions we found that, even if there are constraints on the full alignment of the editorial outlooks across Sky News and the News Corp titles, the increased control of the MFT over Sky News resulting from the Transaction would give the MFT the greater ability to align

⁴⁰⁵ Briefing note for the Secretary of State, DCMS relating to 'the announcement of our consultation on media ownership', 23 November 2001, Annex B (cited in the Leveson Report, Volume 3, Part I, Chapter C, paragraph 5.12 (page 1,281) and submitted to the Leveson Inquiry as Exhibit TJ13 to the witness statement of Tessa Jowell MP, 21 May 2012.

the media enterprises it controls across specific issues, to increase the prominence of stories or opinions or to downplay others. This would risk reducing the independence of Sky News over time, leading to a reduction in diversity of viewpoints. It would also allow the MFT to influence directly a larger group of news viewers and readers, and to exercise greater influence over the news agenda.

Assessment of sufficiency of plurality

- 12.6 The final step in our assessment is to consider whether, in light of these effects, there would be a sufficient plurality of persons with control of media enterprises following the Transaction. In considering this question, we have taken account of all the evidence and analysis set out in the previous chapters.
- 12.7 As set out in chapter 6, in assessing sufficiency we have focused on two elements:
- (a) 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 – the diversity of viewpoints consumed, and the ability to influence public opinion and the political agenda. In this context, we have considered the availability, consumption and impact of the viewpoints over which the MFT has control; and the strength of MFT's influence over public opinion and the political agenda; and
 - (b) the wider context of other media enterprises serving audiences in the UK. 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 over the public opinion and the political agenda might be mitigated or moderated by other media enterprises.
- 12.8 Based on the analysis in chapters 7 and 10, we have provisionally concluded that the MFT would have greater control over a substantial share of the range of viewpoints consumed by audiences for news in the UK. For example:
- (a) 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;
 - (b) 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 established and growing online brands, which provide a wide variety of content to diverse sections of the population; and

- (c) The MFT will be the only person with control of media enterprises with influence across all four platforms – TV, radio, print newspapers, and online.

12.9 While we note that the MFT already has material influence over the media enterprises providing these various viewpoints, the Transaction would further concentrate control of these enterprises in the hands of the MFT, in particular by giving the MFT materially greater control over an important and trusted provider of broadcast news in Sky News.

12.10 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:

- (a) 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 set 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;
- (b) traditional news providers, particularly newspapers and broadcasters, continue to play a key role in leading the news agenda across all media platforms;
- (c) 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 particularly across print newspapers, TV and online;
- (d) members of the Murdoch family and senior executives at News Corp have historically had greater access to ministers than other comparable news providers, and the scope for access and influence could be increased following the Transaction.

12.11 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.

12.12 We consider that the presence of established news providers in newspaper and TV continues to be the principal factor in determining the extent of media plurality in the UK. We expect that the largest news providers today will

continue to be the most significant providers in the near future. 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.

- 12.13 In our view two important consequences follow from this. First, as reflected in the statutory limits on cross-platform ownership,⁴⁰⁶ combinations of TV and newspaper organisations 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.
- 12.14 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.
- 12.15 While the provision of online news has developed rapidly and there has been entry of online-only news providers and intermediaries, 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 the Sky News and News Corp newspapers are significant online players.
- 12.16 There are a relatively limited number of national news providers in the UK which we consider have the scope to lead the news agenda on a sustained basis.
- 12.17 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

⁴⁰⁶ Section 391 of CA03 prohibits a newspaper operator with a market share of 20% or more of newspaper circulation from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20% (the 20/20 rule). See Appendix B.

BBC can directly challenge the positions taken by other news providers or materially mitigate or moderate other news owners' influence.

- 12.18 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 will be the only person with control of media enterprises with control and influence across all four platforms – TV, radio, print newspapers and online, and all other news providers are of a magnitude smaller than the combination of Sky News and News Corp newspapers. Consequently, the MFT will be the only person with control of media enterprises that would have brands which span the spectrum of highly trusted broadcast news through to unregulated opinion and comment.
- 12.19 We consider that it is unlikely that another news provider would be able to materially mitigate or moderate the increased control and influence of the MFT post Transaction in terms of the size and cross-platform nature of its media enterprises in the foreseeable future, either through organic growth or by acquisition. In that regard, we consider it is relevant that history indicates the difficulty in building up a significant national news provider through growth, rather than acquisition, 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.

Provisional finding on the media plurality consideration

- 12.20 Taking the points outlined earlier 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 the viewpoints consumed by audiences in the UK and would give the MFT too much influence over public opinion and the political agenda.
- 12.21 Overall, we have 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.

Broadcasting standards consideration

13. Framework for the assessment of the broadcasting standards consideration

- 13.1 This is the first time that the broadcasting standards consideration in section 58(2C)(c) of the Act has been considered by us (or our predecessor body the CC). We therefore set out below the background to the provision, the approach taken in the DTI Guidance and that taken by Ofcom in its Public Interest Report. We then outline our interpretation of the broadcasting standards consideration and the approach we have taken in carrying out our assessment. In carrying out this assessment we have taken into account the views and information submitted to us by the Parties and by a wide range of third parties, as regards the proper interpretation of the broadcasting standards consideration and its application to the Transaction.

Background

- 13.2 The broadcasting standards consideration specified in section 58(2C)(c) of the Act refers to:
- 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.
- 13.3 For convenience, we refer to the standards objectives set out in section 319 of the Communications Act 2003 (CA03) as the ‘broadcasting standards objectives’.
- 13.4 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 genuine commitment to the broadcasting standards objectives, which are in the nature of general principles, rather than to the detailed rules of the Broadcasting Code (and other broadcasting regulation that gives effect to the broadcasting standards objectives).
- 13.5 In our assessment of the broadcasting standards consideration, we had regard to the terms of section 58(2C)(c) of the Act, the scheme of the Act, and materials which help place this provision in context. In particular, the:

- (a) [Explanatory notes](#) to CA03 (the Explanatory Notes) (in particular paragraphs 797 to 811); and the
- (b) Enterprise Act 2002: [Public interest intervention in media merger: guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers](#) (the DTI Guidance).

13.6 The Explanatory Notes to CA03 state that the broadcasting standards consideration looks:

at the content of the media enterprises involved and the extent to which media owners demonstrate a genuine commitment to complying with the standards objectives – ie complying with the spirit and not just the letter of the objectives.⁴⁰⁷

13.7 The DTI Guidance is consistent with the Explanatory Notes, explaining that the intention behind the broadcasting standards consideration is:

to assess whether persons controlling or carrying on media enterprises post-merger are likely to comply with the spirit as well as the letter of the broadcasting standards set down in the Communications Act 2003.⁴⁰⁸

13.8 The assessment required for the purposes of section 58(2C)(c) (ie the broadcasting standards consideration) is different from the fit and proper person assessment which Ofcom must conduct under sections 3(3) of the Broadcasting Acts of 1990 and 1996. These provisions impose on Ofcom a duty not to grant a broadcast licence to any applicant unless Ofcom is satisfied that they are a fit and proper person to hold such a licence and that any existing licensee continues to be a fit and proper person to hold such a licence. It does not necessarily follow from the fact that a person is fit and proper to hold a broadcasting licence that they are also 'genuinely committed' to the attainment of the broadcasting standards objectives. These two tests are distinct, even if some evidence may be relevant to both.

13.9 We note that Ofcom carried out a separate assessment of whether Sky would remain fit and proper to hold broadcast licences in the event of the Transaction going ahead. Ofcom published its decision on 29 June 2017 (the fit and proper decision).⁴⁰⁹ Ofcom concluded that 'the overall evidence available to date does not provide a reasonable basis to conclude that if Sky

⁴⁰⁷ [The Explanatory Notes to the Communications Act 2003](#), paragraph 802.

⁴⁰⁸ [DTI Guidance](#), paragraph 7.22.

⁴⁰⁹ Ofcom, [Decision under section 3\(3\) of the Broadcasting Act 1990 and section 3\(3\) of the Broadcasting Act 1996: Licences held by British Sky Broadcasting Limited, published on 29 June 2017 \(explanatory wording added on 11 September 2017\)](#).

were 100% owned and controlled by Fox, it would not be fit and proper to hold broadcast licences'.⁴¹⁰

The approach to the broadcasting standards consideration in the DTI Guidance

13.10 In summary, the factors that the DTI Guidance envisages that the Secretary of State may take into account in an assessment of the broadcasting standards consideration, include:

- (a) the past compliance of broadcasting enterprises controlled by the media owner with broadcasting standards in the UK:
 - (i) based on a qualitative assessment rather than focusing on the number of infringements; and
 - (ii) taking into account the due impartiality and accuracy of news offered;
- (b) the compliance of broadcasting enterprises controlled by the media owner with broadcasting standards in other geographic regions or jurisdictions;
- (c) the compliance of any non-broadcasting media enterprises controlled by the media owner with applicable standards, including those imposed under self-regulatory regimes; and
- (d) all other material factors, including comments, statements and plans made by the acquiring media owner which give an indication as to its commitment to UK broadcasting standards post transaction.⁴¹¹

The approach to the broadcasting standards consideration taken by Ofcom

13.11 The Ofcom Public Interest Report states that '[w]hile the broadcasting standards consideration can ... be complex and ... requires a qualitative assessment, much of this is related to historical and ongoing compliance with our own Broadcasting Code and other regulatory requirements'.⁴¹²

13.12 Ofcom's assessment of the broadcasting standards consideration is set out in section ten of the Ofcom Public Interest Report. This assessment addressed, in turn:

⁴¹⁰ [Fit and proper decision](#), paragraph 10.

⁴¹¹ [DTI Guidance](#), paragraphs 7.24 and 7.25.

⁴¹² Ofcom, [Public Interest Report](#), paragraph 3.30.

- (a) the number of breaches of the Broadcasting Code by Sky and Fox since 2012;
- (b) a comparative assessment of the number of breaches by Sky and Fox in the context of the compliance records of two broadly comparable broadcasters: Viacom⁴¹³ and Discovery;⁴¹⁴
- (c) Fox News' impartiality and accuracy;
- (d) the compliance of News Corp newspapers with the Editors' Code of Practice (the Editors' Code);
- (e) Fox and Sky's broadcast compliance in other jurisdictions, with most weight given to EU countries where a similar approach to broadcasting standards has been adopted;
- (f) the adoption of new procedures by Fox in May 2017, following a finding that it had not put in place procedures to ensure the compliance of Fox News' content with the Broadcasting Code;
- (g) public statements made by members of the Murdoch family; and
- (h) failures of corporate governance (by reference to the separate assessment set out in Ofcom's fit and proper decision).⁴¹⁵

13.13 Having taken these factors into account, Ofcom concluded that the evidence did not demonstrate that the merged entity would lack a genuine commitment to the attainment of the broadcasting standards objectives.

13.14 In correspondence between the Secretary of State and Ofcom during August and September 2017, Ofcom provided further reasoning (at the request of the Secretary of State) in relation to its decision on the relevance of – and the weight it gave to – corporate governance concerns at Fox and News Corp in assessing the broadcasting standards consideration. The key points raised by Ofcom in explaining its approach are:

- (a) Ofcom's starting point was that a statutory regime exists for securing broadcasting standards compliance including sanctions, which in its view establishes a framework which incentivises an upfront commitment to compliance through licensing requirements and provides ongoing ex post

⁴¹³ Viacom owns MTV, Nickelodeon, Comedy Central, Paramount, VH1, and Channel 5 (since 2014).

⁴¹⁴ Discovery owns the Discovery Channel, Animal Planet and TLC.

⁴¹⁵ Ofcom [Public Interest Report](#), footnote 74 and paragraph 10.51.

protection for the public interest in the attainment of broadcasting standards;⁴¹⁶

- (b) against that framework, in considering corporate governance in relation to the broadcasting standards consideration, Ofcom's approach was that 'something in the nature of the corporate governance concern had to give rise to an identifiable risk in terms of broadcast standards compliance';⁴¹⁷
- (c) although non-broadcasting corporate governance issues may indirectly be relevant to broadcasting standards, Ofcom considered them to be more directly relevant to the issue of fitness and properness to hold a broadcast licence;⁴¹⁸
- (d) Ofcom placed significant weight on the compliance records of Sky (54 UK broadcast licences) and Fox (14 UK broadcast licences), which it considered are good, noting that it had considered broadcasting compliance primarily by reference to complaints and that it believed this to be an effective and proportionate approach;⁴¹⁹
- (e) while Ofcom had concerns about Fox News' lack of adequate procedures for compliance with the Broadcasting Code, it considered it had afforded it sufficient weight when considering it in the round together with other relevant evidence;⁴²⁰
- (f) Ofcom also took account of the incentivising effect of its ability to enforce against any breaches of content standards under the broadcast regulatory framework.⁴²¹

Our interpretation of the broadcasting standards consideration

13.15 Below we cover four aspects that have informed our framework for the assessment of the broadcasting standards consideration:

- (a) what is meant by a genuine commitment to the attainment of the broadcasting standards objectives;
- (b) the persons whose 'genuine commitment' we should assess;

⁴¹⁶ Ofcom, [Letter to DCMS](#), 25 August 2017, page 2.

⁴¹⁷ Ofcom, [Letter to DCMS](#), 25 August 2017, page 2.

⁴¹⁸ Ofcom, [Letter to DCMS](#), 25 August 2017, page 3.

⁴¹⁹ Ofcom, [Letter to DCMS](#), 25 August 2017, page 4.

⁴²⁰ Ofcom, [Letter to DCMS](#), 25 August 2017, page 4.

⁴²¹ Ofcom, [Letter to DCMS](#), 25 August 2017, page 5.

- (c) the statutory question in Article 6(3) of the Order;⁴²² and
- (d) the relevance of evidence relating to wider regulatory compliance and corporate governance.

We then outline the framework for our assessment itself.

Genuine commitment to the attainment of the broadcasting standards objectives

- 13.16 There is limited guidance and no precedent available on the interpretation of the broadcasting standards consideration, and in particular what is meant by the term 'genuine commitment to the attainment' of the broadcasting standards objectives.
- 13.17 We consider that the phrase '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 relevant legislation, here the provisions of the Act and the Order relating to public interest interventions in media mergers.
- 13.18 As outlined previously, both the Explanatory Notes⁴²³ and the DTI Guidance⁴²⁴ 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 and the Broadcasting Code. In contrast, Ofcom considered that the assessment of genuine commitment should focus primarily on historical and ongoing compliance with the Broadcasting Code and other regulatory requirements, and that it does not require a commitment beyond compliance with the Broadcasting Code (for example, to 'some "spirit" of impartiality not captured by the [Broadcasting] Code').⁴²⁵
- 13.19 A legal opinion submitted by Fox stated that the way one 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'. The same opinion stated that consideration of a commitment to the 'spirit' of the Broadcasting

⁴²² That is whether, taking account of the broadcasting standards consideration, the Transaction may be expected to operate against the public interest.

⁴²³ [The Explanatory Notes to the Communications Act 2003](#), paragraph 802.

⁴²⁴ [DTI Guidance](#), paragraph 7.22.

⁴²⁵ Ofcom, [Letter to DCMS](#), 25 August 2017, page 5.

Code lacks clarity and would be a disproportionate inhibition on freedom of expression and would result in very substantial uncertainty.

- 13.20 In the Court of Appeal's assessment of the media plurality consideration, it referred to the 'clear requirement for a detailed and realistic analysis which is inherent in the statute as a whole'.⁴²⁶ We consider that such a detailed and realistic analysis is also required in the assessment of the broadcasting standards consideration.
- 13.21 We agree with the Parties and with Ofcom that where a media enterprise is already involved in broadcasting in the UK, its record of complying with the Broadcasting Code and other regulatory requirements 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, a sufficient basis for a conclusion that a relevant person has a genuine commitment to the attainment of the broadcasting standards objectives.
- 13.22 We note the references in the Explanatory Notes and in the DTI Guidance to the need to show a commitment to the spirit as well as the letter of the broadcasting standards objectives. In our view, these references support the emphasis in the statute on the need for a 'genuine' commitment and the reference to the principles contained in the broadcasting standards objectives (rather than the detailed rules of the Broadcasting Code). These points, taken together, reinforce our view that something more than a positive record of compliance is required.
- 13.23 We are nevertheless mindful that a media enterprise's 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 point made in the legal opinion submitted by Fox 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. This is particularly so given that the broadcasting standards objectives are themselves not precise legal requirements, but more general principles that in turn require interpretation in their application, including by Ofcom via the Broadcasting Code.
- 13.24 Our view is that to demonstrate the genuine commitment required in the broadcasting standards consideration, the relevant persons must show that effective steps have been, and/or will be taken to promote and support a culture within the relevant media enterprises in which the broadcasting standards objectives are attained. We would therefore expect to see

⁴²⁶ Court of Appeal judgement, BSKyB/ITV, paragraph 120.

observable indicators that provide evidence of those persons' 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 policies, systems and procedures that are embedded within the business in a way that supports and promotes the ongoing attainment of the broadcasting standards objectives. In addition, the resources committed to compliance, including in training employees and developing and maintaining their knowledge of the Broadcasting Code and other relevant regulatory requirements, would, in our view, provide evidence of the necessary genuine commitment to the broadcasting standards objectives.

13.25 In our view, this is a workable and evidence-based approach to assessing the media enterprises' commitment to the broadcasting standards regime (both in its spirit and its letter). In contrast, a positive record of compliance with the Broadcasting Code does not by itself necessarily imply that adequate steps have been taken by the media enterprise to attain compliance by design. Instead that record may be by coincidence or as a consequence of the absence of complaints being made to or monitoring being carried out by, Ofcom.

13.26 Fox also submitted that the purpose of the broadcasting standards consideration is primarily to ensure that where a UK broadcaster is acquired by an entity without UK broadcast licences, and therefore without a track record of compliance with broadcasting standards in the UK, its commitment to those standards can be tested prospectively.⁴²⁷

13.27 In our view, this purpose is not suggested by the plain wording of the statute, the Explanatory Notes, or the DTI Guidance. If parliament had intended for the broadcasting standards consideration to be relevant primarily to the acquisition of a UK broadcaster by an entity without UK broadcasting licences then it could have adopted this formulation in the statute.

The persons whose 'genuine commitment' we should include in our assessment

13.28 As set out in chapter 6, section 58A of the Act contains additional provisions concerning the construction of the considerations specified in section 58(2C). In BSkyB/ITV, the Court of Appeal noted that the drafting of section 58A(5) indicates that it applies for the purposes of section 58 as a whole, not just for section 58(2C)(a) (the media plurality consideration), and is therefore also

⁴²⁷ Fox, [initial submission on broadcasting standards](#), paragraph 2.4.

relevant if section 58A(2C)(c) (the broadcasting standards consideration) is invoked.⁴²⁸

13.29 The MFT ‘controls’ Fox, Sky and News Corp because the MFT has material influence over each of them for the purposes of section 26 of the Act, pre and post the Transaction.⁴²⁹ The effect of section 58A(5) is that Fox, Sky and News Corp (each being a media enterprise for the purposes of section 58A(1) and (2)) are treated as under the control of only one person, the MFT, for the purposes of our assessment of the broadcasting standards consideration.

13.30 As set out in paragraph 4.6 onwards, Fox and Sky are both persons carrying on media enterprises and will cease to be distinct as a result of the Transaction. In addition, the MFT is, pursuant to section 58(5) of the Act, deemed to be the person in control of Fox and Sky, and will therefore be the person with control of the media enterprises that are ceasing to be distinct. Accordingly, in our assessment of the broadcasting standards consideration we consider the genuine commitment to the attainment of the broadcasting standards objectives of:

- (a) Fox and Sky, as the persons carrying on the media enterprises that will cease to be distinct as a result of the Transaction; and
- (b) the MFT, as the person that controls these enterprises following the Transaction, informed by the extent to which the media enterprises controlled by the MFT themselves demonstrate such a genuine commitment,

in order to decide whether the Transaction may be expected to operate against the public interest.

The interpretation of the statutory question in Article 6(3) of the Order

13.31 The statutory question we need to decide is whether, taking account of the broadcasting standards consideration, the Transaction may be expected to operate against the public interest.

13.32 We consider that the purpose of the broadcasting standards consideration is to guard against the concern that persons who do not have a genuine commitment to the attainment of the broadcasting standards objectives may acquire greater influence, or control, over a media enterprise involved in broadcasting in the UK.

⁴²⁸ Court of Appeal, BSKyB/ITV, paragraph 115.

⁴²⁹ See chapter 7 for further detail.

- 13.33 Sky submitted that it was necessary to show that the Transaction is more likely than not to result in Sky failing to have a genuine commitment to broadcasting standards post Transaction. We note that the broadcasting standards consideration refers to the need for both those controlling and those carrying on media enterprises to have a genuine commitment to the broadcasting standards objectives. In our view, the statute requires consideration of the position of those controlling media enterprises (such as the MFT) because, if those persons lack the necessary commitment, that may cause the commitment of the media enterprises which they control to weaken over time.
- 13.34 Consequently, we do not consider it necessary to reach a conclusion on how the lack of a genuine commitment to the attainment of the broadcasting standards objectives by those acquiring greater control or influence would in fact manifest itself in terms of impact on the commitment of the target media enterprise, in this case Sky (for example, that there would be a degradation of the compliance arrangements in place or the level of compliance). Rather, we consider that a merger may be expected to operate against the public interest because the persons carrying on or controlling the relevant media enterprise post merger lack the necessary commitment, so placing the commitment of the target media enterprise at risk.
- 13.35 We have therefore considered the consequences of the Transaction, in the light of the findings in relation to the actual extent of control exercised and exercisable by the MFT and Fox over Sky, and by the MFT over News Corp, set out in detail in chapter 7.
- 13.36 In terms of the broadcasting standards consideration, we consider that this involves an assessment of whether each of Fox, Sky and the MFT (taking into account other media enterprises that the MFT controls for the purposes of section 26 of the Act, including News Corp) has a genuine commitment to the attainment of the broadcasting standards objectives.

Relevance of evidence relating to wider regulatory compliance and corporate governance

- 13.37 We have received a significant volume of submissions raising concerns about certain corporate governance and compliance failures at companies controlled by the MFT, and in which members of the Murdoch family hold senior positions. We have therefore considered the appropriate relevance of, and weight to give, such evidence.
- 13.38 Ofcom's stated approach was that 'something in the nature of the corporate governance concern has to give rise to an identifiable risk in terms of UK

broadcast standards compliance'.⁴³⁰ In her letter to the Parties on 12 September 2017 setting out reasons for her 'minded to' decision to refer the Transaction to us on the broadcasting standards ground, the then Secretary of State stated that:⁴³¹

it is difficult to be sure that any wider failings of corporate governance at 21CF are incapable of affecting broadcasting standards compliance in circumstances where ... 21CF failed to put in place adequate compliance procedures for the broadcast of Fox News in the UK. The representations raise concerns that the various actual and alleged failings might have been a product of a corporate culture that does not prioritise the need for regulatory compliance. In the light of these concerns, the Secretary of State considers that this issue could usefully be considered in further detail by the CMA.⁴³²

13.39 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 promoting and supporting a culture of compliance with regulatory standards. However, we are mindful that a person's failure to adhere to one set of rules or regulations does not necessarily mean that the person is not committed to another, different, set of rules or regulations. Although potentially relevant, further question arises as to the weight that should be attached to evidence of this nature, which we consider later.

Our framework for the assessment of the broadcasting standards consideration

13.40 We considered a wide range of evidence, relating to the UK and elsewhere. Informed by our interpretation of the broadcasting standards consideration set out previously, we defined a framework for assessment covering three broad areas:

- (a) **approach to broadcasting standards objectives in the UK:** we looked in detail at evidence of how the Parties approach the broadcasting standards objectives in the UK. We reviewed their policies, systems and procedures to see how they organise their businesses to achieve compliance in order to assess how the broadcasting standards objectives

⁴³⁰ Ofcom, [Letter to DCMS](#), 25 August 2017, page 2.

⁴³¹ DCMS, [Letter to the Parties](#), 12 September 2017, page 4.

⁴³² DCMS, [Letter to the Parties](#), 12 September 2017, page 4.

are promoted and supported. We then examined their track records of compliance with the Broadcasting Code and other related regulatory requirements. We reviewed both the numbers of breaches and the nature of these breaches. We looked in particular at Sky and Fox channels that are compiled specifically for UK and European audiences. We then looked separately at Fox News (which is a simulcast of the US channel) and Sky News given that due impartiality and due accuracy of news is identified in the DTI Guidance as an appropriate consideration, and in light of the large volume of submissions we have received raising concerns regarding impartiality and accuracy at Fox News;

- (b) **approach to broadcasting standards outside the UK:** we examined how the Parties and News Corp (as a media enterprise controlled by the MFT and in which members of the Murdoch family hold senior positions) approach broadcasting standards in countries outside the UK. We examined their policies, systems and procedures and then looked at their track record of complying with broadcasting rules and regulations in other jurisdictions. We spoke to media regulators in other jurisdictions to look behind the numbers and to seek their views on Fox's compliance record and approach. We focused in particular on EU jurisdictions, where prevailing regulation is the most similar to that which exists in the UK;
- (c) **approach to wider regulatory compliance and corporate governance:** we 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. We examined their corporate governance and the efficacy of their policies, systems and procedures that seek to ensure wider regulatory compliance and considered the relevance of the evidence for our assessment.

14. Approach to broadcasting standards objectives in the UK

- 14.1 The Parties have a long history of broadcasting in the UK. Fox and Sky each hold multiple UK broadcast licences and each air a number of channels that attract tens of thousands of viewers each day.^{433,434} Against this backdrop, we consider that of the three areas in our assessment framework, the Parties' approach to the broadcasting standards objectives and records of compliance

⁴³³ Fox Broadcasting Company was founded in October 1986. It has held a licence for the National Geographic Channel since September 1997, and currently holds 13 licences.

⁴³⁴ Sky Television, the satellite TV service, was launched by News International in February 1989. Sky News also began broadcasting in 1989. Sky currently holds 54 licences.

with the Broadcasting Code in the UK comprise the most direct and relevant evidence. We received a 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.⁴³⁵

- 14.2 For our assessment of the broadcasting standards consideration, we examined the steps that the relevant persons have taken to promote and support the broadcasting standards objectives in their media enterprises; we reviewed the policies, systems and procedures of the Parties, and examined their records of compliance with the Broadcasting Code between January 2013 and November 2017. As well as the number of breaches, we carried out a qualitative review of the breaches recorded against the Parties.
- 14.3 To put the compliance record of the Parties into context, we also carried out comparative analysis beyond that covered by Ofcom in its Public Interest Report. We consider it appropriate to compare broadcasters that were similar in nature and size. We therefore compared Fox News' compliance record in the UK with that of other international news providers: Al Jazeera, Russia Today (RT) and CNN; and Sky's with other UK-based broadcasters: the BBC, ITV and Channel 4. For the reasons set out in the assessment framework previously, we focused on the aspects relating to news and current affairs programming.
- 14.4 Finally, we reviewed the public comments, statements and plans made by Fox and the MFT to inform our analysis of the acquiring media owners' commitment to the broadcasting standards objectives.
- 14.5 Before examining the Parties' approach to broadcasting standards in the UK and their record of compliance with the Broadcasting Code, we summarise how broadcasting is regulated in the UK.

The regulation of broadcasting in the UK⁴³⁶

- 14.6 In the UK, Ofcom is responsible for regulating the broadcasting sector through a licensing system; it is unlawful to broadcast into the UK without holding a licence. Ofcom issues broadcast licences and has a statutory duty to 'not grant a licence to any person unless ... satisfied that he is a fit and proper person to hold it'.⁴³⁷

⁴³⁵ See [submissions from third parties](#).

⁴³⁶ Chapter 5 provides more detail.

⁴³⁷ Section 3(3) of the [Broadcasting Act 1990](#).

- 14.7 Ofcom also has an ongoing duty to ensure that existing licence holders continue to be fit and proper. Ofcom is required by statute to ‘do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence’.⁴³⁸ In practice, this power is rarely exercised: Ofcom has only revoked two broadcast licences on these grounds in the past five years, both as a result of adverse findings of serious and repeated broadcasting content standards non-compliance.
- 14.8 The broadcasting standards objectives are given effect to by a number of codes. These include the Broadcasting Code, the Cross-promotion Code, the Code on the Scheduling of Television Advertising (COSTA), the Code on the Prevention of Undue Discrimination between Broadcast Advertisers (CUDPA) and the UK Code of Broadcast Advertising (the BCAP Code). As explained below, complying with the Broadcasting Code is particularly important because it covers content and includes rules going directly to news and current affairs programming.
- 14.9 The broadcasting standards objectives are defined in section 319(2) of CA03. In short, the broadcasting standards objectives include due accuracy and due impartiality, a restriction on harmful or offensive material, as well as other matters including advertising, product placement, responsible broadcasting in respect of religious programmes, and the control of political advertising.⁴³⁹ Ofcom must have regard to various matters that are ‘relevant to the securing of the standards objectives’.⁴⁴⁰ These factors are defined by Ofcom as ‘context’ and are taken into account when applying the Broadcasting Code. As set out by Ofcom, context includes (but is not limited to):^{441,442}
- (a) the editorial content of the programme, programmes or series;
 - (b) the service on which the material is broadcast;
 - (c) the time of broadcast;

⁴³⁸ Section 3(3) of the [Broadcasting Act 1990](#).

⁴³⁹ See Appendix B for a full list of the broadcasting standards objectives.

⁴⁴⁰ Page five of the [Broadcasting Code](#) sets out section 319(4) of CA03. These criteria have informed Ofcom’s approach to setting the Broadcasting Code and therefore must be taken into account by broadcasters when interpreting the rules. Further guidance on context is set out in the Broadcasting Code (see section two and section five).

⁴⁴¹ See definition at paragraph 2.3 of the [Broadcasting Code](#) and Ofcom’s outline of how to use the Broadcasting Code (page 5) (a) to (e).

⁴⁴² See also ‘Meaning of ‘due impartiality’, the [Broadcasting Code](#), section five and see section six, the [Broadcasting Code](#) for meanings relating to elections and referendums.

- (d) what other programmes are scheduled before and after the programme or programmes concerned;
- (e) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- (f) the likely size and composition of the potential audience and likely expectation of the audience;
- (g) the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- (h) the effect of the material on viewers or listeners who may come across it unawares.

14.10 All licence holders are required to comply with the Broadcasting Code as a condition of their licence. Ofcom is alerted to potential breaches of the Broadcasting Code in two ways: audience complaints and content monitoring. Ofcom receives a large number of complaints each year. In 2016/17, viewers made over 15,000 complaints. Ofcom, however, told us that the number of complaints against a programme is not a proxy for whether the programme is in breach of the Broadcasting Code: it may receive a large number of complaints against a programme but decide not to investigate, whereas it has investigated content and found serious breaches when only one complaint has been made. Ofcom undertakes proactive monitoring of services from time to time. Ofcom told us that in 2016/17 it had monitored [redacted] services, including Fox News during the 2017 general election.

14.11 Ofcom investigates and, where appropriate, adjudicates on whether a broadcaster has breached the Broadcasting Code. The process for investigating potential breaches of the Broadcasting Code is:

- (a) if Ofcom believes that the complaint raises potentially substantive issues under the Broadcasting Code, Ofcom will begin an initial assessment into the alleged breach of the relevant issues. In cases where Ofcom does not already hold a recording of the content concerned, this will normally begin by asking the broadcaster for a copy of the relevant programme (a ‘tape recording request’). The broadcaster has five days to respond;
- (b) on receipt of the recording from the broadcaster, Ofcom will then assess the content and make a decision on whether to open an investigation;

- (c) if Ofcom decides not to open an investigation, it will publish a 'not pursued' line in the Ofcom Broadcast and On Demand Bulletin – which is published every two weeks;
- (d) If Ofcom decides to open an investigation into a potential breach of the Broadcasting Code, Ofcom will write to the relevant broadcaster summarising the material parts of the complaint(s), setting out the particular provisions of the Broadcasting Code which Ofcom considers are relevant and applicable to the investigation, and invite the broadcaster to make representations in response within ten working days;
- (e) Ofcom will then prepare a 'preliminary view' having taken account of the broadcaster's written representations. All preliminary views are provided to a panel of Ofcom's content board before the preliminary view is provided to the broadcaster.⁴⁴³ An Ofcom executive will then make the final decision on the preliminary view. Following this, Ofcom will give the broadcaster ten working days to provide any further written representations;
- (f) On receipt of any further representations from the broadcaster, Ofcom will reach a final decision. The outcome of Ofcom's investigation is published in Ofcom's Broadcast and On Demand Bulletin. The decision will report one of three possible outcomes:
 - (i) **breach**: the content was in breach of the Broadcasting Code; this will be recorded as a breach in the published decision;⁴⁴⁴
 - (ii) **resolved**: the content was in breach of the Broadcasting Code but the broadcaster has taken action to remedy the breach, such as implementing changes to internal processes to reduce the risk of future breaches of the Broadcasting Code; or made an on-air apology for the breach. In these occasions, the published decision will report the breach as resolved; or
 - (iii) **not in breach**: the content was not in breach of the Broadcasting Code; this will be recorded as not in breach in the published decision.

14.12 When a broadcaster breaches the Broadcasting Code deliberately, seriously, repeatedly or recklessly, Ofcom may impose statutory sanctions.

⁴⁴³ Ofcom, [General procedures for investigating breaches of broadcast licences](#).

⁴⁴⁴ There are often several exchanges between Ofcom and the broadcaster before a breach is finalised. Broadcasters may take action to avoid the designation of breach but in some cases, the nature of the breach is such that a broadcaster is unable to take corrective action.

- 14.13 Regulating broadcasting standards is a resource intensive and complex process. Ofcom currently oversees over 1,000 licence holders who broadcast hundreds of thousands of hours of content in the UK. In the past five years, Ofcom has launched almost 900 investigations under the content standards procedures, and has identified 572 breaches of the Broadcasting Code. On 17 occasions, Ofcom has imposed statutory sanctions on broadcasters for deliberate, serious, repeated or reckless breaches.
- 14.14 Ofcom is required to balance the need to provide adequate protections to members of the public against content that is harmful and offensive, with ensuring that the broadcaster's freedom of expression and the right of audiences to receive ideas and information, is not unduly restricted. This requires judgement. Ofcom cannot monitor the licensing requirements of all licensees and monitor all content broadcast in the UK. Ofcom told us that it adopts a risk-based approach to identifying services which it considers should, from time to time, be monitored. It focuses its resources on 'the services that it considers are likely to present the greatest risk from a compliance perspective.'
- 14.15 All broadcasters are required to comply with the same rules set out in the Broadcasting Code, but Ofcom will take into account context, as summarised earlier, in applying the rules.

Fox's approach to the broadcasting standards objectives in the UK

- 14.16 A number of third parties submitted that Fox lacks a genuine commitment to the broadcasting standards objectives and that its compliance record with UK broadcasting standards is poor. For example, Media Matters for America, submitted that 'there continues to be an overwhelming pattern of failure by Fox to comply with the broadcasting standards objectives as set out in the Communications Act 2003.'⁴⁴⁵ Similarly, the Campaign for Press and Broadcasting Freedom (CPBF) alleged that broadcasters owned or controlled by the MFT lacked a commitment to broadcasting standards in general and that Fox News, in particular, had been the subject of a 'disproportionate number of complaints' in the UK and does not prioritise regulatory compliance.⁴⁴⁶ The National Union of Journalists (NUJ) raised concerns that companies controlled by the MFT prioritised political influence over regulatory standards.⁴⁴⁷ Other third parties have made broadly similar claims that Fox lacks commitment to regulatory standards in general and broadcasting

⁴⁴⁵ [Submissions to issues statement.](#)

⁴⁴⁶ [Submissions to issues statement.](#)

⁴⁴⁷ [Submissions to issues statement.](#)

standards in particular.⁴⁴⁸ We have taken these submissions into account when examining Fox's approach to compliance and its compliance records, both in the UK and in other jurisdictions.

14.17 Fox is a broadcaster with a longstanding history in the UK. Its current UK channels are broadcast by Fox Network Group (FNG), by National Geographic and by STAR, Fox's Asian TV business. In total, these divisions currently hold 12 UK broadcast licences.^{449,450,451} Fox divisions previously held two other UK broadcast licences; one for the Fox News channel and one for the STAR Utsav channel. Fox News relinquished its licence to broadcast Fox News in the UK in November 2017 after the decision was taken to stop the international feed in August of that year; and STAR relinquished its licence to broadcast STAR Utsav in January 2018, on the same day that it stopped broadcasting in the UK. Our assessment considered the steps taken by Fox – which the business divisions FNG, National Geographic, STAR and Fox News are part of – to promote and support the broadcasting standards objectives and the compliance record of all of Fox's 14 UK broadcast licences.

14.18 FNG and National Geographic broadcast entertainment and documentary channels in the UK. While much of the content carried on FNG and National Geographic channels is US-produced (eg FOX and YourTV carries more than 95% US-produced content), the majority of these channels⁴⁵² are compiled specifically for audiences in the UK and Ireland and carry some specific UK and European content. Most of the content is pre-recorded.

14.19 Content broadcast on STAR channels is produced in India for viewers in India and members of the 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. As with the FNG and National Geographic channels, most of the content is pre-recorded.

14.20 Fox News was broadcast in the UK as a direct simulcast from the US. Fox News is a US news channel, produced in the US, targeted at and therefore

⁴⁴⁸ [Avaaz](#), for example, alleges that Murdoch owned companies exhibit a top-down corporate culture that deprioritises regulatory and ethical compliance.

⁴⁴⁹ The 12 Fox channels for which Fox currently holds licences to broadcast in the UK are: FOX; FOX +1; FOX HD; YourTV; YourTV+1; National Geographic Channel; National Geographic HD; Wild; Wild HD; STAR Gold; STAR Plus; and STAR Bharat (formerly STAR Life OK).

⁴⁵⁰ In addition, Fox has a 50.1% stake in Baby TV, for which Baby Network Limited is the licence holder. Baby TV is an entertainment channel targeted at infants, toddlers and parents, which is compiled for audiences in the UK and Ireland.

⁴⁵¹ Your TV and YourTV+1 operate under the same licence in respect of their cable and satellite service, and a separate licence in respect of distribution of those channels via Digital Terrestrial Television (Freeview) technologies.

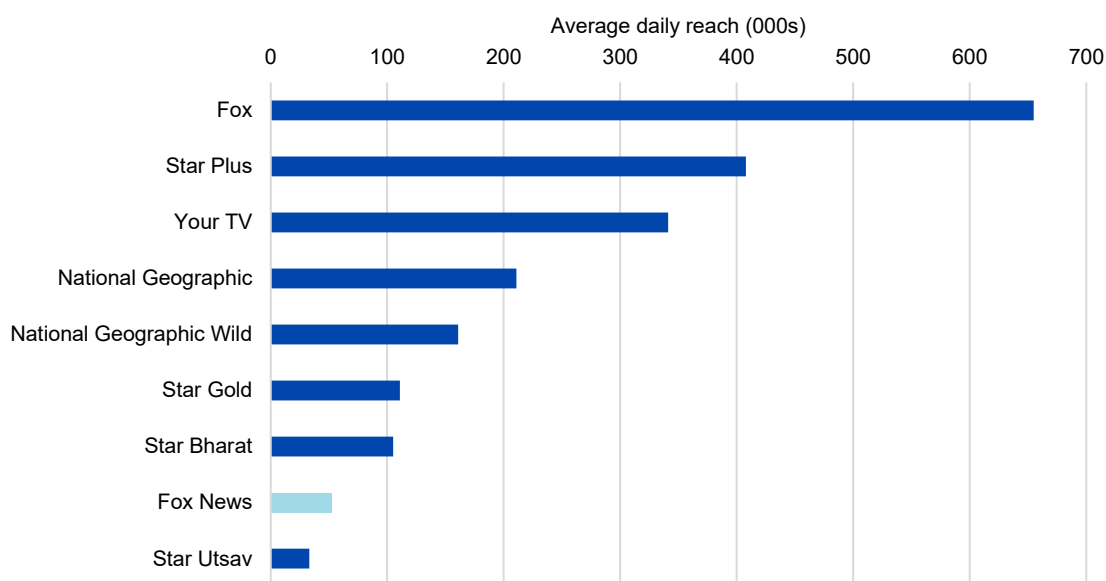
⁴⁵² With the exception of National Geographic Wild, which is compiled for a European audience.

covering issues that are most relevant for US audiences. There is only one international feed so the content shown in the UK was identical to that shown in other countries outside the US. The only difference between the US and the UK content was the inclusion of Fox Extra inserts, which replaced US advertising. As it is a 24-hour news channel that focuses primarily on news and current affairs, its content was more likely than other Fox channels broadcast in the UK to engage the Broadcasting Code’s requirements on due accuracy and due impartiality. Most of the broadcast material on Fox News is ‘live’.

14.21 As a condition of their licence, all UK broadcast licence holders are required to comply with the Broadcasting Code. However, news providers based in the UK (like Sky and the BBC) targeted at UK audiences and therefore reporting on UK news and current affairs, are more likely to cover issues that fall within the Broadcasting Code’s requirements on due accuracy and due impartiality.

14.22 Figure 14.1 shows the average UK daily audience reach for the Fox channels based on BARB viewing data (see paragraph 10.19 for an explanation of how BARB is calculated).⁴⁵³

Figure 14.1: UK viewing figures by Fox channel



Source: CMA analysis of BARB viewing data; average viewing figures of three weeks (9 to 15 January 2017, 10 to 16 March 2017 and 17 to 23 July 2017).

14.23 The Fox channels that are compiled specifically for audiences in the UK and Ireland have higher viewing figures in the UK than those compiled for

⁴⁵³ We derived the average viewing figures using BARB reach data for three weeks (9 to 15 January 2017, 10 to 16 March 2017 and 17 to 23 July 2017).

European audiences or Fox News, which is a simulcast from the US and aimed at a US audience. The FOX channel is the most popular channel of all Fox channels broadcast in the UK, with an average daily reach of 655,000.⁴⁵⁴ The most popular National Geographic channel attracts an average daily audience of 211,000 and STAR GOLD, the most popular of the STAR channels, has an average audience reach of 111,000. Fox News had much lower audience figures with an estimated daily reach of 50,000 (only STAR Utsav channels had lower audience figures).⁴⁵⁵

14.24 As outlined previously, the risk-based approach taken by Ofcom to monitoring and enforcing the Broadcasting Code takes into account context. This includes the expectations of the audience which are likely to differ depending on whether the content was created and/or compiled specifically for a UK audience. On this basis, the 13 licences of FNG, National Geographic and STAR have a similar context in that these channels primarily produce entertainment and documentary material compiled for UK or European audiences. Fox News has a different context as its primary focus is news and current affairs and it is a direct simulcast from the US targeted at US audiences, with smaller audiences in the UK than almost all of the other Fox channels. We consider these factors in assessing how much weight should be attached to each of the licensees' approach to broadcasting standards and compliance records when considering Fox's overall commitment to the broadcasting standards objectives in the round.

14.25 First, we consider the policies, systems and procedures Fox has in place to promote and support the broadcasting standards objectives within its businesses that hold licences to broadcast in the UK (FNG, National Geographic, STAR and Fox News), and then assessed the breaches of the Broadcasting Code for all of the licences held by Fox during the past five years.

Fox's steps to promote and support the broadcasting standards objectives

14.26 As set out in chapter 13, in order to demonstrate a genuine commitment to the attainment of the broadcasting standards objectives, we consider that the relevant persons in control of or carrying on a media enterprise have to be able to provide evidence of the steps it has taken or will take to promote and support the broadcasting standards objectives within its business.

14.27 We assessed Fox's approach to promoting and supporting the attainment of the broadcasting standards objectives by examining the approach of the three

⁴⁵⁴ The FOX channel is broadcast by the FNG business.

⁴⁵⁵ STAR Utsav stopped broadcasting in the UK on 4 January 2018.

businesses that currently hold UK broadcast licences (FNG, National Geographic and STAR) and that of Fox News. We looked at evidence on:

- (a) the policies, systems and procedures in place to see how up to date and effective they were, including the arrangements that the licence holders had in place to check, monitor and edit content before it was broadcast into the UK;
- (b) the resources committed to compliance, including the makeup and experience of the compliance teams;
- (c) the provision of training to editorial staff and members of the compliance teams;
- (d) the availability of up to date written guidance to support editorial decision making and compliance;
- (e) Fox's interaction with the regulator.

14.28 Fox has one set of compliance arrangements for its FNG and National Geographic channels, and a separate set of compliance arrangements for STAR channels. It also had separate compliance arrangements in place for Fox News when it was broadcasting in the UK.

FNG and National Geographic

14.29 Oversight of compliance with UK broadcasting standards for FNG and National Geographic channels, which currently hold nine licences to broadcast in the UK, is undertaken by FNG's compliance team and legal department located in the UK.⁴⁵⁶

14.30 FNG has a dedicated team that oversees compliance with the Broadcasting Code for the FNG and National Geographic channels (the Code Compliance Team). The Code Compliance Team consists of four compliance viewers/editors dedicated to UK programming and the Head of Programming Operations and Compliance. Fox submitted that all team members have practical experience of the Broadcasting Code, gained at major broadcasting organisations. New joiners to the Code Compliance Team receive training and shadowing experience, as well as key documents, including an overview of the compliance process.

⁴⁵⁶ In addition, the compliance function for Baby TV is carried out by the Vice-President and Deputy General Counsel of FNG's legal team in London under the provisions of a shareholders' agreement between FNG and Baby TV.

- 14.31 Any changes to the Broadcasting Code or Ofcom's Guidance Notes, as well as any important Ofcom rulings, are communicated to the Code Compliance Team by the Head of Programming Operations and Compliance.
- 14.32 All FNG and National Geographic's UK premieres are viewed by the Code Compliance Team in their entirety for compliance with the Broadcasting Code and assessed for suitability against the scheduled time slot. They are then categorised as either:
- (a) fine for their scheduled slot in which case they are processed accordingly;
 - (b) in need of editing for their scheduled slot (in which case, where such editing is straightforward, it takes place before airing; where it is not, it is referred up to the Head of Programming Operations and Compliance for assessment); or
 - (c) unable to be edited for their scheduled slot, in which case the content is referred up to the Head of Programming Operations and Compliance for a schedule amendment. The Code Compliance Team recheck the edited material to ensure that the correct version is broadcast.

STAR

- 14.33 STAR's Standards and Practices Department deals with compliance for all STAR channels, including those broadcast in India and internationally. The Standards and Practices Department currently comprises of 24 staff members. Nine members of the Standards and Practices Department deal with compliance issues with UK broadcasting standards. Content may be edited for broadcasting in the UK to comply with the Broadcasting Code. Edits are identified by the Standards and Practices Department and carried out by the relevant production company.
- 14.34 Fox submitted that each member of the Standards and Practices Department that deals with UK compliance receives Ofcom training when they join STAR, and team members continue to receive regular training sessions throughout their employment with STAR. Its Ofcom training programme has been in place since 2008. Sixteen members from across STAR's Standards and Practices Department (including some members who do not on a day to day basis deal with Ofcom compliance issues), attended a two-day compliance training programme conducted by STAR's external adviser. The training covered the Broadcasting Code and accompanying Guidance Notes, as well as the British board of Film Classification Guidelines. This training was also attended by members of STAR's international business and content teams.

Fox News

- 14.35 Fox News held a licence to broadcast Fox News in the UK from 2001 until November 2017. As a UK broadcast licence holder, Fox was required to meet certain regulatory standards including having in place adequate compliance arrangements.
- 14.36 All legal and compliance arrangements for Fox News were handled by its New York office. Fox told us that compliance with UK broadcasting standards was dealt with on a case by case basis, under the ultimate supervision of Fox News' General Counsel.
- 14.37 During phase 1, Ofcom found that Fox did not have any specific procedures in place for Fox News in the UK and that neither of the two key members of staff in the Fox News New York office had received specific training on the Broadcasting Code. For instance, Fox did not have:
- (a) a compliance team specifically to monitor the Broadcasting Code in respect of Fox News;
 - (b) a dedicated compliance officer in place to monitor and enforce compliance with the Broadcasting Code at Fox News; and
 - (c) any standalone training for Broadcasting Code issues at Fox News.
- 14.38 Fox told us that although it did not have UK specific procedures for Fox News, those members of staff in the US dealing with international broadcasting standards compliance had practical experience with the UK broadcasting standards and the Broadcasting Code. Fox said that it had procedures that addressed some of the requirements of the Broadcasting Code. Fox cited an example in support of this: Fox News had a procedure in place for reviewing Fox Extra inserts – which unlike Fox News' main programming are produced specifically for the international feed – for compliance with the Broadcasting Code. Fox told us that Fox News' Senior Media Counsel, a member of the Fox News compliance team based in New York, had 'multiple meetings with the producer responsible for overseeing Fox Extra' and in these meetings, the Senior Media Counsel 'outlined the Broadcasting Code requirements' and 'provided advice as to appropriate subject matter treatment, and assisted with vetting certain Fox Extra segments'. According to Fox, from these meetings, nearly '36% of segments were removed from the international feed to ensure compliance with the [Broadcasting] Code'.
- 14.39 However, in May 2017, during the course of phase 1 of the Inquiry, Ofcom sent a letter to Fox, stating that it had 'significant concerns about the adequacy of the arrangements and procedures currently in place to ensure

Fox News' compliance with Ofcom codes and guidance' and required Fox News to introduce new arrangements to satisfy the conditions of its licence.

14.40 In response to questions from Ofcom on why Fox News did not have satisfactory processes in place, effectively for the whole period that it was operating in the UK, Fox said that it considered Fox News' handling of UK broadcasting standards was 'appropriate and proportionate' because:

- (a) Fox News had in place 'general controls and procedures' that ensured proper source checking and accuracy in factual news prior to it being broadcast;
- (b) the nature of the content was news and opinion programming produced for US audiences; and
- (c) there was minimal penetration with audiences in the UK.

14.41 Dissatisfied with Fox's response, Ofcom asked for further information to understand how Fox News went about securing compliance with the provisions of the Broadcasting Code, particularly with reference to impartiality.

14.42 Fox provided a lengthy response to Ofcom. In summary:

- (a) Fox News offered UK-based audiences an opportunity to access diverse and alternative information they would not otherwise receive. It provided a real 'window on the world', offering an important variety to the mainstream news agenda;
- (b) Fox understood that Ofcom had always taken into account the importance of 'due' in due impartiality, with the result that preservation of impartiality has to be appropriate to the subject matter and nature of the programme (eg opinion content); the service on which the material is broadcast (eg an international channel); the likely expectation of the audience (eg the UK audience is fully aware that Fox News is a direct feed from the US); and the likely size and composition of the audience (Fox News had a relatively small UK audience);
- (c) Fox News had broadcast in the UK on the assumption that Ofcom agreed with its approach, as reflected in the fact that over the past ten years it had only been found to be in breach of the due impartiality requirements twice (plus one other instance of a breach in relation to the timing of the broadcast of coverage of the EU referendum);⁴⁵⁷

⁴⁵⁷ The requirements applied at the elections/referendums (as per section six of the Broadcasting Code).

- (d) Fox News did not have special procedures in respect of programming produced for US audiences that specifically related to the Broadcasting Code.

14.43 Following a meeting with Ofcom on 11 May 2017 in which Fox News' compliance with its licence conditions was discussed, Fox wrote to Ofcom setting out the additional compliance arrangements that Fox News was going to put in place. These included:

- (a) the appointment of a dedicated Ofcom compliance officer (Fox News' Senior Media Counsel) with direct responsibility for all UK regulatory matters including the Broadcasting Code, Ofcom's Guidance Notes and all licence conditions. The Ofcom compliance officer would also have the authority to remove content from the international feed, so that it is not available in the UK, where it may raise compliance issues;
- (b) a specific protocol for upward referral for matters with a direct reporting line to Fox's Group General Counsel, Gerson Zweifach;
- (c) a gating process would be put in place for pre-recorded material, whereby the producer would assess the content and consider whether it may conflict with the Broadcasting Code. Where the producer suspects this to be the case, the matter would be reported to the Ofcom compliance officer or another member of Fox's legal team;
- (d) for live output (which accounted for the majority of Fox News' broadcast), there would be a similar gating process whereby the producer, prior to live output being broadcast, would consider whether the content was likely to conflict with the Broadcasting Code. As with pre-recorded material, this would be escalated to the dedicated Ofcom compliance officer or the legal team. As noted in (a), the dedicated Ofcom compliance officer would have the authority to remove content from the live feed;
- (e) introduction of training seminars on the Broadcasting Code; and incorporation of Ofcom-specific guidance into compliance, legal and regulatory training under the direct supervision of one of Fox's Group Chief Compliance Officers (GCCOs).

14.44 In order to assess the adequacy of the proposed changes, Ofcom asked Fox to provide further detail on the additional arrangements, including which staff would be involved with UK compliance. Fox responded by saying that it was preparing written instructions to guide producers. The new procedures were codified into written guidance which was shared with all relevant employees at Fox News, including all editorial staff.

Fox News' compliance record after the introduction of the new compliance arrangements

14.45 We looked at Fox News' record since the introduction of the new policies, systems and procedures. We note two particular events:

(a) the first is the decision by Ofcom published on 6 November 2017 finding that an episode of Fox News' Tucker Carlson Tonight breached three of the rules of the Broadcasting Code on: adequate representation of alternative views on discussions programmes; due impartiality on matters of major political or industrial controversy; and including a wide range of significant views when dealing with major matters of political or industrial controversy.⁴⁵⁸ As noted in paragraph 14.70, we consider the decision to broadcast that content in the UK as a significant oversight by Fox News. The programme was broadcast on 25 May 2017, ten days after Fox said new compliance arrangements were put in place at Fox News. Fox explained to us that this was just after key editorial and legal staff had received training on the Broadcasting Code but before it had put in place new procedures to comply with it. Fox subsequently conducted additional training dedicated to due impartiality for the producers of Fox News' opinion commentary programmes.

(b) Fox News decided not to broadcast its service in the UK on 8 June 2017, the day of the general election, to avoid any potential breach of the Broadcasting Code. Fox was mindful of the dangers of contravening the Broadcasting Code as it had previously breached rule 6.4 when it covered the June 2016 referendum on the UK's membership of the EU.

14.46 Fox submitted that since introducing the 'enhanced Ofcom compliance arrangements' the decision not to broadcast on the day of the UK general election was the only instance where Fox News needed to change its content to ensure compliance with the Broadcasting Code. It noted that removing content is seen as the option of last resort where it is considered necessary to ensure compliance. It went on to say that the training seminars conducted in May and July 2017 were designed specifically to increase Fox News' employees' (in particular, Fox News' editorial staff) awareness of the Broadcasting Code. According to Fox, this mitigated the need to remove or amend content.

14.47 Following the introduction of the new compliance arrangements, Fox News was subject to ten further complaints, which were made as representations to

⁴⁵⁸ [Ofcom Broadcast and On Demand Bulletin, Issue number 341](#)

the Secretary of State when she was considering whether to refer the Transaction to us. Ofcom assessed these complaints and concluded that none warranted opening an investigation.⁴⁵⁹

- 14.48 The new compliance arrangements adopted by Fox News were far more extensive than those that had been in place. We note that the breach in the Tucker Carlson programme was broadcast by Fox News on 25 May 2017, shortly after the new compliance arrangements had been put in place. However, we note that the decision not to broadcast on the day of the election suggested that Fox News had taken due notice of the requirements of the Broadcasting Code and the compliance arrangements introduced were being applied. Given Fox News stopped broadcasting in the UK in August 2017, we have limited evidence to assess the efficacy of the new arrangements. However, we note that Ofcom concluded in phase 1 that the improvements made by Fox to the Fox News compliance arrangements and procedures were sufficient to meet the requirements of its licence.⁴⁶⁰

Fox's decision to stop broadcasting Fox News in the UK

- 14.49 On 29 August 2017, Fox announced that it would no longer broadcast Fox News in the UK. Fox told us that Fox News' agreement with Sky for distribution in the UK was due to expire in December 2017 and that it did not intend to renew the agreement. Fox told us that this was because Fox News had 'minimal audience penetration in the UK' and generated limited revenue from the UK feed. We note that broadcasting Fox News in the UK was not a profitable venture for Fox: Fox News made [redacted] of approximately [redacted] per year between 2013 and 2017. By comparison, the FNG, National Geographic and STAR UK divisions were far more profitable, generating average net profits in excess of [redacted] and [redacted] respectively over the same period.⁴⁶¹
- 14.50 In addition, Fox told us that it had become clear that 'Fox News had become the focus of a significant number of complaints to Ofcom and that this would have increased further the cost related to maintaining the service in the UK'. Fox News had received requests from Ofcom for recordings of 11 programmes for the first eight months of 2017; this followed nine instances in 2016, three in 2015 and none in 2014. In view of these considerations, the decision to stop broadcasting Fox News in the UK was brought forward to the end of August 2017. The decision was taken by Rupert Murdoch on 22

⁴⁵⁹ Letter from Ofcom to DCMS, 4 September 2017, page 3.

⁴⁶⁰ Ofcom, [Public Interest Report](#), paragraph 10.42.

⁴⁶¹ Fox provided a consolidated profit and loss account for FNG and National Geographic divisions.

August 2017, on receipt of privileged legal advice. Given the limited economic significance of the decision, it did not require board approval.

- 14.51 When questioned about why Fox News had not stopped broadcasting earlier in the UK (given that it has always had a limited audience reach and had made losses in each year since it started, save for one year), Fox told us that the 'material development' that led to the decision was the 'increasing number of complaints received', and not the introduction of the new compliance arrangements.

Summary of the steps Fox has taken to promote and support the broadcasting standards objectives

- 14.52 We note that there are similarities between STAR, FNG and National Geographic, both in terms of the content broadcast and the compliance measures each have in place. Content broadcast on the five FNG and four National Geographic channels is largely produced in the US, and all but one are compiled specifically for audiences in the UK and Ireland (the exception being National Geographic Wild, which is compiled for a European-wide audience). The three STAR channels (and STAR Utsav when it was broadcast in the UK), while produced in India, were targeted at audiences across Europe and compiled for a European audience.
- 14.53 Each of these channels predominately broadcast pre-recorded content and very rarely show news or current affairs or report on matters of political or industrial controversy. All of the divisions have in place similar policies, systems and procedures to support and promote the attainment of the broadcasting standards objectives. These include having in place a dedicated compliance team trained specifically on UK standards and the Broadcasting Code. In addition, all three divisions have effective ex ante controls to monitor, review and edit content to assess compliance with UK standards and the Broadcasting Code, before it is broadcast in the UK and Ireland.
- 14.54 The picture at Fox News was different. Unlike STAR, FNG and National Geographic, 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 the Fox Extra inserts. We also note that Fox News had a small audience with an average daily reach of 50,000 which was the lowest viewing figures for all of the Fox channels (except for STAR Utsav).
- 14.55 All legal and compliance arrangements for Fox News were handled by its New York office. Prior to May 2017, Fox News did not have a 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 members of staff dealing with international broadcasting standards. Fox, however, noted that although it did not have UK-specific procedures, its procedures at that time addressed some of the requirements of the Broadcasting Code, citing the example of when the Fox News international compliance team carried out a review of the Fox Extra inserts and removed content to ensure compliance with the Broadcasting Code.

- 14.56 Fox explained that the approach taken by Fox News was appropriate and proportionate. It was founded both on an understanding of the importance of context in applying the Broadcasting Code to content, highlighting that Fox News was a direct simulcast from the US aimed at a US audience and that it had a small audience in the UK; and on the assumption that Ofcom agreed with the approach it had 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 the impartiality requirements three times.
- 14.57 Ofcom, however, during phase 1 of the Inquiry, found that Fox News' compliance arrangements were inadequate and did not satisfy the requirements of Fox News' UK broadcast licence. After Ofcom raised its concerns, Fox News swiftly implemented new arrangements, including the assignment of a dedicated compliance officer to monitor Fox News' compliance with the Broadcasting Code, compliance and editorial staff training on the requirements of the Broadcasting Code and the monitoring of content to ensure compliance with the Broadcasting Code. These measures were in place for four months from May to August 2017.

Assessing records of compliance with broadcasting regulation in the UK

14.58 The broadcasting standards objectives are given effect to by a number of codes. These include the:

- **Broadcasting Code:** sets out rules which set the standards for the content of TV and radio programmes;
- **Cross-promotion Code:** sets out rules relating to cross-promotions on TV, ie promotions relating to broadcasting related services (such as promotions of channels or programmes or catch-up players);
- **Code on the Scheduling of Television Advertising (COSTA):** requires broadcasters to ensure that TV advertising and teleshopping are readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service, and also includes technical rules which set strict limitations on the amount and scheduling of TV advertising;

- **Code on the Prevention of Undue Discrimination between Broadcast Advertisers (CUDBPA):** sets out rules intended to prevent broadcasters from exercising undue discrimination between advertisers that seek to have their advertisements included in TV or radio services; and
- **UK Code of Broadcast Advertising (the BCAP Code):** sets out rules which set the standards for TV and radio advertising.

14.59 Our starting point to assess the compliance records of the Parties was Ofcom's assessment at phase 1. We asked Ofcom about its approach to examining broadcasters' records of compliance. Ofcom explained its methodology for calculating the number of breaches at phase 1 and highlighted two points as particularly important:

- (a) in phase 1, Ofcom assessed compliance with all the relevant codes which give effect to the standards objectives.⁴⁶² Therefore in calculating the number of breaches of Fox and Sky (and comparators Discovery and Viacom), it considered breaches of all of the codes. However, Ofcom noted that it generally views breaches of COSTA to be of a lower degree of severity and gravity to breaches of its content rules (ie of the Broadcasting Code) as the content rules are designed to protect audiences from the inclusion of potentially serious and harmful or offensive material;
- (b) while Ofcom will, in its content standards compliance decisions, consider a broadcaster has breached a rule (or rules) in connection with a particular programme (or programmes), for the purposes of compiling the compliance record of a broadcaster, it will count the outcome of each investigation into potential breaches of the relevant rules, as published in its Broadcast and On Demand Bulletin, as the applicable decision. This means that, regardless of whether an investigation covers single or multiple programmes, issues and/or rules, Ofcom records one decision, taken as a whole, at the end of its investigation. Accordingly, when considering the compliance history of a broadcaster, where Ofcom has published one decision about a breach or breaches by that broadcaster, it would count this as one breach.

14.60 The rationale behind Ofcom's methodology is that:

- in any given case, there are often a range of rules that might be breached. Ofcom will therefore tend to investigate content under the most relevant rules. Therefore, the outcome of each investigation would count as a

⁴⁶² See also Ofcom, [Public Interest Report](#), paragraph 10.11 and footnote 246.

single breach/not in breach outcome, otherwise it would artificially and unfairly inflate a broadcaster’s compliance record by counting each separate breach of an individual code rule (even from the same case) as a single breach.

- Ofcom might consider multiple programmes in the same investigation because they all relate to the same single issue. An adverse finding would count as one breach.

14.61 We have applied the same methodology for calculating the number of breaches when we assessed the compliance history of the Parties and other broadcasters.

Fox’s record of compliance with the Broadcasting Code

14.62 Fox has a longstanding history of broadcasting in the UK. In addition to our review of its compliance policies, systems and procedures, we also consider the compliance record of all 14 Fox UK licences over the past five years. We received a number of submissions from third parties, including Media Matters for America,⁴⁶³ Avaaz⁴⁶⁴ and the CPBF⁴⁶⁵ alleging that Fox’s record of compliance with the Broadcasting Code was poor.

14.63 Ofcom has recorded 16 breaches (one was recorded as resolved) against Fox between 2013 and 2017.⁴⁶⁶ Table 14.1 provides a breakdown of the breaches by the nature of the breach and Figure 14.2 sets out the breaches by channel.

Table 14.1: Breaches of the Broadcasting Code recorded against Fox between 2013 and 2017⁴⁶⁷

<i>Nature of issue</i>	<i>Breached</i>	<i>Resolved</i>
Protection of under 18s	1	1
Harm (flashing images)	1	-
Generally accepted standards	-	-
Offensive language	1	-
Material misleadingness	1	-
Due impartiality/elections	5	-
Sponsorship/Promotion	6	-
Total	15	1

Source: CMA analysis of Ofcom data.

⁴⁶³ [Media Matters response to issues statement.](#)

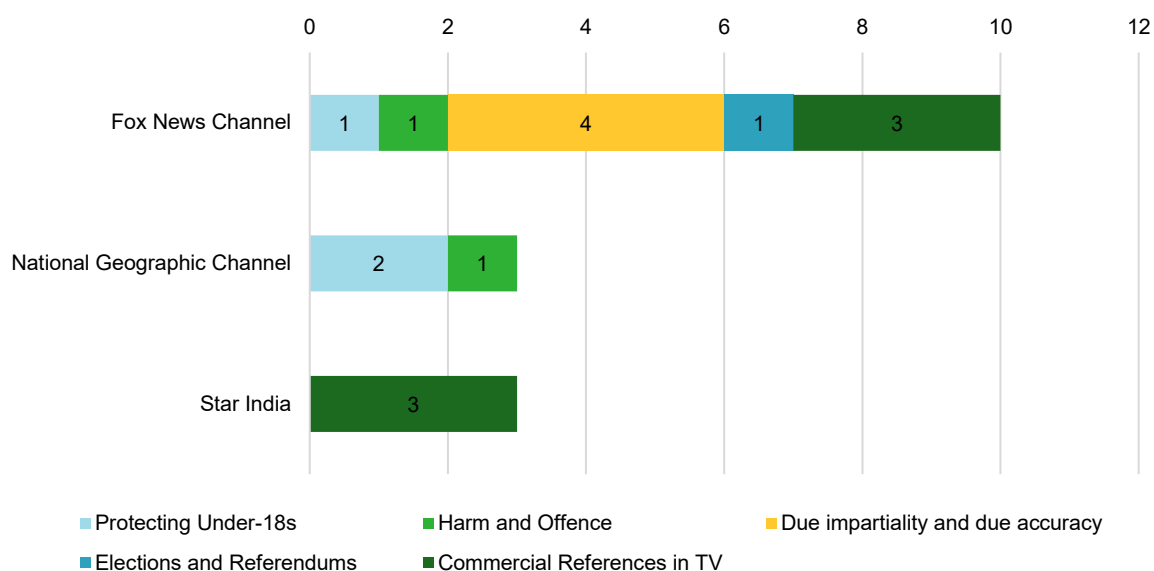
⁴⁶⁴ [Avaaz submission.](#)

⁴⁶⁵ [CPBF submission.](#)

⁴⁶⁶ See Table 14.1 for details of ‘breached’ and ‘resolved’.

⁴⁶⁷ The breaches included in Table 14.1 and all of the tables and figures hereinafter include resolved breaches. See paragraph 5.29 in chapter 5 and Appendix B for an explanation of breaches and resolved breaches.

Figure 14.2: Number of breaches of the Broadcasting Code recorded against Fox, by channel and type of breach



Source: CMA analysis of Ofcom data.

14.64 The breakdown of the breaches by Fox channels is as follows:

- (a) more than half of the breaches (ten of the 16) were recorded against Fox News (See paragraph 14.66 onwards for more detail);
- (b) three of the breaches related to programmes shown on the National Geographic Channel; two breaches related to failure to protect under 18s (in its final decision, Ofcom considered one of these breaches resolved⁴⁶⁸ as National Geographic had taken additional compliance arrangements as a result of this incident) and the other breach was about content that could have caused harm to viewers with photosensitive epilepsy.
- (c) three of the breaches were recorded against STAR TV, all of them related to breaches of section nine of the Broadcasting Code (commercial references in TV programming) and dated back to 2012 and 2013.⁴⁶⁹

14.65 Fox News has attracted more breaches than any of the other Fox channels broadcast in the UK and is responsible for 62.5% of Fox's total breaches. We now consider the nature of the breaches by Fox News in more detail.

⁴⁶⁸ See footnote 444.

⁴⁶⁹ In addition to breaches of the Broadcasting Code, we note that STAR Bharat, a STAR channel, breached COSTA once in 2013.

Fox News' compliance with the Broadcasting Code

14.66 Ten of the 16 breaches Ofcom recorded against Fox were by Fox News.⁴⁷⁰ Details of the ten breaches recorded against Fox News between 2013 and November 2017 can be found in Appendix L. We summarise them here.

14.67 Five of the ten breaches related to sections one, two and nine of the Broadcasting Code:

- (a) the first breach concerned section one (protection of children under the age of 18) and related to content aired before 2013. We therefore attach less weight to it;
- (b) the breach of section two was in relation to a programme that discussed the attack on the offices of the French satirical weekly newspaper Charlie Hebdo in Paris on 7 January 2015 (the Hebdo Attack) and incidents in the Île-de-France region from 7 January 2015 to 9 January 2015. Assertions were made in the programme to the effect that areas of Paris were 'no-go zones' and that the English city of Birmingham was an example of a city 'where non-Muslims just simply don't go'. Although Fox apologised for these statements, Ofcom found that the corrections did not sufficiently mitigate the materially misleading statements and potential harm and offence caused to viewers by the programme.

14.68 Three of the ten breaches related to section nine of the Broadcasting Code, which is concerned broadly with the inappropriate use of commercial references. These breaches are similar in nature to the breaches by STAR and National Geographic.

14.69 The other five breaches by Fox News were of the specific provisions of the Broadcasting Code on due impartiality and the specific impartiality requirements relating to broadcasting during elections and referendums (ie sections five and section six of the Broadcasting Code). These five breaches were all recorded against Fox News between April 2016 and May 2017. Details of the five breaches can be found in Appendix L, and are summarised here:

- (a) the first breach related to content broadcast on Fox Extra, which featured a commentator giving their views on and generally criticising abortion using highly emotive language. The subject was relevant to viewers in the

⁴⁷⁰ Ofcom's decision was published in January 2013, which is within our time period of analysis, but related to content broadcast in July 2012.

UK and in Ofcom's view was a matter of public policy that engaged the impartiality provisions of the Broadcasting Code;

- (b) the second breach concerned the special impartiality required by broadcasters at the time of elections and referendums, where a programme discussed and analysed issues relating to the EU referendum while the polls were still open in the UK. Ofcom noted that it had regard to the fact that the prohibition under this rule was not qualified in any way, such that it would not be possible for a broadcaster to justify the material by context;
- (c) the third breach related to programming that had breached both section five and section six of the Broadcasting Code. Routine monitoring by Ofcom identified three programmes in which a number of highly critical statements were made about Hilary Clinton along with various statements which were described as supporting the policies of Donald Trump. Ofcom concluded that the content did not preserve impartiality;
- (d) the fourth breach related to content covering President Trump's Executive Order relating to the restriction of travel from seven majority-Muslim countries. Ofcom considered this was a matter of political and public controversy which was of particular relevance and significance to UK viewers. The opening monologue featured several video clips of public figures reacting critically to the Executive Order. Ofcom concluded that the programme had breached impartiality rules;
- (e) the fifth and most recent breach related to an episode of Tucker Carlson Tonight. In the episode, Mr Carlson interviewed two people (Nigel Farage and Mark Steyn) to discuss the bomb attack on 22 May 2017 in Manchester. The programme included highly critical statements about: Theresa May; the Deputy Mayor of Manchester; Baroness Hughes; the Chief Constable of Greater Manchester; Ian Hopkins; the UK government; and the UK authorities. These included accusations that particular individuals and public bodies had done nothing to: counter terrorism; stop radicalisation; protect citizens from terrorism; or protect 'thousands of underage girls' from rape and abuse. There was no reflection of the views of the UK government or any of the authorities or people criticised, which Ofcom said it would have expected given the nature and amount of criticism of them in the programme. Ofcom concluded that the programme had breached impartiality rules.

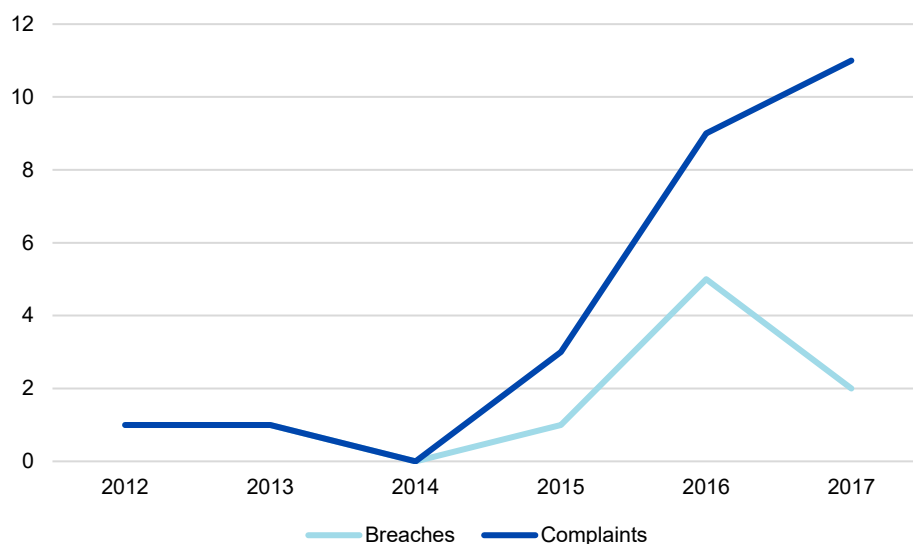
14.70 Our qualitative review of the breaches recorded against Fox News indicates a mixed picture. Some were more technical breaches of the Broadcasting Code that were similar in nature to breaches by Fox's other channels and other

broadcasters operating in the UK. Five, however, were breaches of section five and section six of the Broadcasting Code, where the content was considered by Ofcom to be a matter of political or industrial controversy relevant to the UK, and therefore required Fox News to offer some degree of impartiality in its discussion of these matters. Fox News, in these instances, did not take the necessary steps to ensure its content complied with the Broadcasting Code. Ofcom considered the content to be in breach even after taking into account all of the context relevant to Fox News, such as audience expectations.

- 14.71 In particular, we consider that in relation to the material broadcast on Tucker Carlson Tonight on the terrorist attack in Manchester, and against the backdrop of such a significant national tragedy, Fox News, as a UK broadcast licence holder, knowing that such content was specific to the UK, should have taken appropriate steps. These could have included efforts to provide a more impartial viewpoint or editing the international feed so that the programme was not broadcast to viewers in the UK. This editing could have been achieved either by stopping the feed (like Fox opted to do on the day on the UK general election in June 2017) or by replacing the content with another programme.
- 14.72 Nevertheless, we note that Ofcom did not consider that the breach in relation to Tucker Carlson Tonight or any other programme broadcast on Fox News in the 16 years that it was broadcast in the UK, were serious enough to warrant a sanction. As the regulator in this sector, we place due weight on Ofcom's view on this matter.
- 14.73 We also note that all ten breaches recorded against Fox News were related to non-news programming or Fox Extra inserts which are by their very nature discussion pieces. We consider the distinction between news and non-news coverage and Fox News' compliance record with respect to each as an important consideration in our assessment of Fox's overall compliance record.
- 14.74 The number of complaints made against Fox News increased notably during and since 2016. Fox told us that there were 11 complaints in 2017,⁴⁷¹ and this followed nine instances in the full calendar year 2016, and contrasted with just three instances in 2015, and none in 2014.
- 14.75 Figure 14.3 provides a breakdown of the number of complaints made against Fox News and the number of those complaints that resulted in Ofcom finding a breach of the Broadcasting Code.

⁴⁷¹ Until August 2017 when Fox News stopped broadcasting in the UK.

Figure 14.3: Number of breaches and complaints against Fox News



Source: CMA analysis of Fox data.

14.76 In explaining the increase in the number of breaches in more recent years, Fox told us that Fox News had become a ‘lightning rod for complaints’ since the Transaction was announced. It had become a target for campaign groups who were triggered by the Transaction to ‘generate a lot of complaints’.

14.77 Submissions made to the then Secretary of State during her consideration of whether to refer the Transaction to us and on what grounds, argued that the number of complaints against Fox News in the past was low because the audience was small and self-selecting and the viewers were likely to be sympathetic to the style and content of its programming. Avaaz told us that ‘Ofcom’s approach to assessing breaches by Fox was limited and incomplete, as it relied on complaints by a small, self-selecting audience’.⁴⁷² Avaaz also stated that Fox’s ‘record of non-compliance was greater than even the complaints against it’.⁴⁷³

14.78 Ofcom’s position, however, is that all broadcast audiences are self-selecting so the same principle would apply to the compliance history of all broadcasters. Ofcom will investigate programmes which have received one complaint or thousands of complaints such that the relationship between the number of complaints and the number of investigations is not direct. In addition to reviewing complaints, Ofcom also noted that it undertakes targeted monitoring of channels from time to time, which has included Fox News. Ofcom’s approach would have therefore detected non-compliance of Fox as much as it would have for any other broadcaster.

⁴⁷² [Avaaz submission](#), October 2017, page 2.

⁴⁷³ [Avaaz submission](#), October 2017, page 2.

- 14.79 The increase in complaints meant that the content broadcast on Fox News had come under greater scrutiny from Ofcom. With the increase in the number of complaints, Ofcom was made aware of broadcast material that was in breach of the Broadcasting Code that might otherwise have been undetected had it not been the subject of a complaint.
- 14.80 The evidence we have obtained does not indicate that Ofcom’s approach to monitoring and enforcing the Broadcasting Code has resulted in undetected breaches at Fox News. While the increase in complaints may have led to an increase in recorded breaches, we consider that the number of breaches of the Broadcasting Code, as recorded by Ofcom following its investigations, and not complaints, is the most informative data. In our view, it is our qualitative review of the nature, as well as the number, of these breaches of the Broadcasting Code, alongside our examination of the steps Fox has taken to promote and support compliance with the broadcasting standards objectives, that most inform our assessment of whether Fox has the necessary genuine commitment.

Comparison with other international news broadcasters

- 14.81 To understand the relative significance of the breaches by Fox News, we considered the compliance record of Fox News against other international news providers operating in the UK.
- 14.82 Fox submitted a list of 28 companies that it regarded as actual or potential competitors for the provision of news content inside the UK. These included UK broadcasters such as BBC and ITV as well as international broadcasters such as Al Jazeera, RT and CNN.
- 14.83 We consider that the international broadcasters Al Jazeera, RT and CNN, are reasonable comparators against which to assess Fox News’ compliance record on the basis that they are all international news channels broadcast in the UK. These international broadcasters may also have similar context to Fox News in terms of the application of the Broadcasting Code to content: CNN and Al Jazeera told us that their channels are not compiled specifically for UK audiences, which is similar to Fox News. We also note that the comparator broadcasters have relatively small audience sizes (see Table 14.2), albeit all of them attracted more viewers than Fox News when it was broadcasting in the UK. As explained earlier, the way in which the due impartiality requirements are applied by Ofcom depends on the context.⁴⁷⁴ Ofcom’s approach may vary according to the nature of the subject, the type of

⁴⁷⁴ See paragraph 14.9 for a description of ‘context’. See ‘Meaning of “due impartiality”’, the [Broadcasting Code](#), section five and see section six, the [Broadcasting Code](#) for meanings relating to elections and referendums.

programme and channel, and the potential size, composition and likely expectations of the audience.

14.84 Table 14.2 considers the broadcast compliance of Fox News relative to other news broadcasters (Al Jazeera, CNN and RT). We carried out our own analysis in which we compared the number of breaches of the Broadcasting Code against the respective broadcasters' average daily reach (using BARB figures where possible) and formulated our own metric of breaches per 100,000 viewers for each broadcaster. The rationale for this metric is that a broadcaster with fewer viewers is likely to be subject to less scrutiny from the regulator in the long term. While this metric has limitations, we consider that it is informative because it allows for a more meaningful comparison between broadcasters that have difference audience sizes.

14.85 Fox told us that the 'CMA's comparison of the number of breaches per 100,000 viewers for these services is an arbitrary and misleading measurement'. Fox said that a 'broadcaster is required, by the terms of its licence, to comply with the relevant codes. This is an absolute requirement and no flexibility is given for the size of its audience'. As outlined in paragraph 14.49, one of the justifications provided by Fox for the legacy compliance arrangements it had in place at Fox News was that Fox News had 'minimal audience penetration'. As we note previously (see paragraph 14.9), the size of the audience is part of the context that Ofcom considers in its approach to monitoring and enforcing the Broadcasting Code.

14.86 Relative to audience size, Fox News' record is worse than RT and Al Jazeera, the two broadcasters for which we have information on viewing figures.

Table 14.2: Comparison of Fox News with RT, Al Jazeera and CNN

	<i>Fox News</i>	<i>RT</i>	<i>Al Jazeera*</i>	<i>CNN†</i>
Average daily reach‡ ('000)	52	172	269	-
% of total viewers	0.12%	0.39%	0.46%	-
Number of breaches	10	10	1	3
Breaches per 100,000 viewers	19.23	5.81	0.37	-

Source: CMA analysis of BARB viewing data and Ofcom data on compliance with the Broadcasting Code.

* BARB only holds audience reach figures for Al Jazeera dating back to February 2016. We used the reach figures from the data set for w/c 25 January 2017.

† BARB does not provide viewing data for CNN. CNN provided its own estimates of viewing figures, based on two different surveys it carries out to estimate viewing figures in the UK. One survey suggested that it had an average daily audience of 977,000 while the other estimated a lower audience figure of 263,000. Using the lower estimate, CNN's breaches per 100,000 viewers is 1.14. We have not chosen to include this in our main analysis because the viewership is not calculated on a consistent basis with that of other broadcasters.

‡ For Fox News and RT, we calculated the 'average daily reach' by averaging BARB weekly reach data for three weeks (w/c 9 January 2017, w/c 10 April 2017 and w/c 17 July 2017).

14.87 Table 14.2 shows that in absolute terms, Fox News had more breaches of the Broadcasting Code than Al Jazeera and CNN, and the same number of breaches of the Broadcasting Code as RT. However, we note that RT had two

breaches of COSTA, which Ofcom generally views to be of ‘lower degree of severity and gravity’ compared with breaches of the Broadcasting Code.

- 14.88 As outlined in paragraph 14.69, Fox News has breached the provisions of the Broadcasting Code relating to due impartiality and special impartiality five times in the past five years, specifically within the 13-month period of April 2016 to May 2017. By way of comparison, we note that Ofcom has recorded seven breaches against RT and one against CNN of the same provisions of the Broadcasting Code in the past five years. Only one of the breaches by RT was in the same 13-month period as Fox’s five breaches.⁴⁷⁵ Two of the seven breaches by RT on due impartiality were in relation to news programming. In contrast, the CNN breach did not relate to news programming and none of Fox News breaches of section five and six related to news programming.
- 14.89 To provide some further context, in the past five years, Ofcom has launched 127 investigations into potential breaches of section five and section six of the Broadcasting Code. It found 88 breaches of these provisions by 62 licence holders in the past five years. Ofcom has issued only one sanction during this period. The sanction was imposed on Channel 4 (see 14.144 for more detail).

Summary of the compliance records of Fox and Fox News

- 14.90 The assessment of Fox’s compliance record in the UK is an important part of our assessment of Fox’s commitment to the broadcasting standards objectives. We reviewed Fox’s compliance records across all 14 licences that it has held during the past five years. The record of 16 breaches of the Broadcasting Code in the past five years raises no particular concerns. Fox News was responsible for ten of Fox’s 16 breaches. Excluding Fox News, the other 13 licences together breached the Broadcasting Code only six times in total in the past five years.
- 14.91 We compared Fox News’ compliance record with that of Al Jazeera, RT and CNN. More breaches of the Broadcasting Code have been recorded against Fox News than Al Jazeera and CNN whereas the same number has been recorded for RT. Fox News’ breaches per 100,000 viewers is worse than the comparable broadcasters. However, Fox News breached the due impartiality provision on two fewer occasions than RT. We also note that three of RT’s ten breaches were in relation to news programming, whereas all of the breaches recorded against Fox News were for non-news programming. On the whole,

⁴⁷⁵ The breach against CNN was not in this 13-month period.

our review of the evidence shows that Fox News' compliance record is on par with RT, and worse than Al Jazeera and CNN.

14.92 Half of the breaches by Fox News were not concerned with accuracy or impartiality or took place over five years ago. Five breaches concerned the Broadcasting Code's provisions relating to due impartiality and special impartiality. In relation to these five breaches, while we consider Fox should have taken appropriate steps to either provide a more impartial viewpoint or edited the international feed so that the relevant programme was not broadcast to viewers in the UK, we attached due weight to Ofcom's comments and decision as the regulator not to impose any sanctions on Fox for any programme that Fox has ever broadcast into the UK.

Public comments, statements and plans made by Fox and the MFT

14.93 The DTI Guidance refers to comments, statements and any other plans which give an indication as to the acquiring media owners' commitment to UK broadcasting standards post merger. A number of third parties submitted that previous public statements by Rupert and James Murdoch in particular called in to question such commitment on the part of Fox and the MFT. Other third parties submitted we should place limited, if any, weight on the statements of members of the Murdoch family.⁴⁷⁶

Fox

14.94 In April 2017, the Fox board made a resolution to 'maintain Sky's excellent record of compliance with the Ofcom Broadcasting code', and 'assure independence and integrity of the Sky News content'. In addition, the board resolved that upon completion of the acquisition, the following matters will require the approval of the Nominating and Corporate Governance Committee of the board:⁴⁷⁷

- (a) the appointment or removal of the Head of Sky News;
- (b) any material changes to the authority or reporting relationship of the Head of Sky News; and
- (c) any future changes to the Sky News Editorial Guidelines.

14.95 We have considered the resolution made by the Fox board in the context of our assessment of the media plurality consideration (see chapters 7 and 8).

⁴⁷⁶ [Ed Miliband et al submission to the issues statement](#).

⁴⁷⁷ See paragraph 16.38 for further details on the functions of the Nominating and Corporate Governance Committee of the board.

For the purposes of the assessment of the broadcasting standards consideration, while we note that the resolution has been passed, we consider this has limited weight in terms of our assessment of Fox's commitment to the broadcasting standards objectives as it is simply a statement of intention.

The MFT

14.96 Members of the Murdoch family have made several public statements in relation to broadcasting standards in the UK. Here we treat these members of the Murdoch family as acting together with the MFT (see 7.5 for more detail of our rationale).

14.97 In Rupert Murdoch's 1989 McTaggart lecture 'Freedom in Broadcasting', he appeared to be hostile towards the BBC.⁴⁷⁸ When talking about the 'British broadcasting elite', he said '[they] argue for special privileges and favours because they are supposed to be in the public interest as a whole. Such special pleading tends to produce a service which is run for the benefit of the people who provide it, rather than the viewers who watch it...'.⁴⁷⁹

14.98 As part of the 2008 House of Lords Select Committee on Communications, the inquiry members met with Rupert Murdoch. The minutes of this meeting showed that Rupert Murdoch believed that Sky News would be more popular if it were more like the Fox News Channel, as it would then be a 'proper alternative to the BBC'.⁴⁸⁰ Rupert Murdoch stated that Sky News could become more like Fox without a change to the impartiality rules in the UK.

14.99 In 2000, in an interview with The Guardian, James Murdoch spoke of the UK media regulatory system, saying 'The things that stick out [in the UK] are a draconian regulatory regime and a subsidised, horrific - how shall I put it - evil taxation scheme, subsidising competitors with no accountability.'⁴⁸¹

14.100 Finally, in his 2009 MacTaggart Lecture 'The Absence of Trust', James Murdoch stated that 'Above all we must have genuine independence in news media. Genuine independence is a rare thing.'⁴⁸² However, he went on to say that 'No amount of governance in the form of committees, regulators, trusts or advisory bodies is truly sufficient as a guarantor of independence. In fact, they curb speech.' He also spoke of Ofcom in its role as a UK regulator – '...the amount of detailed content regulation in UK broadcasting is astonishing.'

⁴⁷⁸ [Freedom in Broadcasting', MacTaggart Lecture](#), Rupert Murdoch, 1989.

⁴⁷⁹ [Freedom in Broadcasting', MacTaggart Lecture](#), Rupert Murdoch, 1989, page 4.

⁴⁸⁰ [House of Lords Select Committee on Communications, *The ownership of the news report*, Appendix 4.](#)

⁴⁸¹ [The Guardian, 2000, *Murdoch junior damns media regulation*.](#)

⁴⁸² ['The Absence of Trust', MacTaggart Lecture](#), James Murdoch, 2009.

14.101 While we consider that these statements are potentially informative, we note that they were made a number of years ago in varying contexts and therefore we attach greater weight in our assessment to the evidence relating to the policies, systems and procedures that Fox has in place in the UK and its record of compliance with the Broadcasting Code.

Provisional conclusion on Fox's genuine commitment to the attainment of the broadcasting standards objectives in the UK

14.102 As set out in paragraph 13.21, our view is that where a media enterprise - in this case Fox - is already involved in broadcasting in the UK, its record of complying with the Broadcasting Code and other regulatory requirements is of central relevance to the assessment of the broadcasting standards consideration.

14.103 Accordingly, we have looked across all 14 UK broadcast licences that were held by Fox during the period in which the Transaction has been under consideration by the regulatory authorities. This includes Fox News, which Fox ceased broadcasting in the UK on 29 August 2017, and STAR Utsav, which Fox ceased broadcasting in the UK on 4 January 2018. 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 UK broadcasting divisions in a way that supports ongoing attainment of those objectives, has highlighted a difference between the 13 Fox licences on the one hand (FNG, National Geographic and STAR), and the licence that was held by Fox News on the other.

14.104 Although the content broadcast on the five FNG and four National Geographic channels is largely US produced, the channels are compiled specifically for audiences in the UK and Ireland.⁴⁸³ At FNG and National Geographic we found evidence of Fox embedding policies, systems and procedures into its businesses to support 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.

⁴⁸³ Except National Geographic Wild, which is compiled for a European-wide audience.

- 14.105 Content broadcast on STAR channels is produced in India for viewers in India and members of South Asian communities globally. The three STAR channels 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 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 procedures are in place to edit content for broadcast in the UK to comply with the Broadcasting Code.
- 14.106 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. 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 members of staff dealing with international broadcasting standards. That said, those members of staff in the US dealing with international broadcasting standards compliance did review the Fox Extra inserts and edited some content to be broadcast on the international feed.
- 14.107 When asked about the lack of UK-specific procedures 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.
- 14.108 The new measures introduced by Fox in response to the concerns Ofcom raised during its phase 1 assessment 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 the new arrangements.
- 14.109 The differences in policies, system and procedures and other proactive steps to engender compliance with the Broadcasting Code between the 12 current Fox licences (and STAR Utsav previously) 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 of its 12 current licences (and STAR Utsav previously), Fox has only been found in breach of the Broadcasting Code six times. Three of these breaches related to broadcasting 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 in 13 months between April 2016 and May 2017), more than all the other 13 Fox licences combined.

14.110 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.

14.111 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. As noted in the assessment of Sky's approach below, this fact contrasts with the record of a UK-based news provider whose content is specifically compiled for UK audiences and who has been sanctioned in relation to breaches in news programming.

14.112 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 previously), 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 provided strong evidence of a genuine commitment to the attainment of the broadcasting standards objectives.

14.113 In contrast, we consider 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.

14.114 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 engender compliance with the Broadcasting Code across its 13 other licences, which all broadcast content specifically compiled for UK and European audiences. Overall we are provisionally satisfied 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's approach to the broadcasting standards objectives in the UK

14.115 Sky currently holds 54 licences to broadcast content in the UK, ranging from news to sports to entertainment programmes. Much of the content is specifically designed for UK audiences. We considered the approach and compliance record of all Sky channels but we examined Sky News (where all the content is produced in the UK for UK viewers) in more detail because news and current affairs coverage and opinion is most likely to engage the due accuracy and due impartiality broadcasting standards, which are highlighted as appropriate to consider in the DTI guidance.

14.116 In its phase 1 assessment, Ofcom suggested that 'it may be the case that Sky had a particularly good record' when compared with Fox.⁴⁸⁴ In its most recent fit and proper assessment of Sky, Ofcom noted that Sky's record of compliance is 'in line with other broadcasters'.⁴⁸⁵ Sky told us that it has met its broadcasting standards obligations (thereby demonstrating its commitment to the attainment of the broadcasting standards objectives) by maintaining strong internal measures in the form of its Editorial Policy and Compliance Teams.⁴⁸⁶

Sky's steps to promote and support the broadcasting standards objectives

14.117 As set out in 13.24, in order to demonstrate a genuine commitment to the attainment of the broadcasting standards objectives, we consider that the relevant persons in control of or carrying on a media enterprise have to be able to provide evidence of the steps it has taken or will take to promote and support the broadcasting standards objectives within its businesses. We received a large number of submissions from third parties which

⁴⁸⁴ Ofcom, [Public Interest Report](#), paragraph 10.28.

⁴⁸⁵ Ofcom, [Decision under section 3\(3\) of the Broadcasting Act 1990 and section 3\(3\) of the Broadcasting Act 1996: Licences held by British Sky Broadcasting Limited, published on 29 June 2017 \(explanatory wording added on 11 September 2017\)](#), paragraph 8.

⁴⁸⁶ [Sky's initial submission](#), paragraph 4.6.

commended Sky's commitment to broadcasting standards and expressed a desire that this commitment be maintained.⁴⁸⁷

14.118 We assessed Sky's approach to promoting and supporting the attainment of the broadcasting standards objectives by examining the approach taken by Sky for all of its UK broadcast licences. We looked at evidence on:

- (a) the policies, systems and procedures in place to see how up to date and effective they were, including the arrangements that Sky had in place to check and monitor content before it is broadcast into the UK;
- (b) the resources committed to compliance, including the makeup and experience of Sky's Editorial and Compliance team;
- (c) the provision of training to editorial staff and members of the compliance team;
- (d) the availability of up to date written guidance to support editorial decision making and compliance, such as the Sky News Editorial Guidelines;
- (e) Sky's interaction with Ofcom.

14.119 In its written submissions, Sky said that we should focus on 'directly relevant evidence of the Parties' broadcast compliance track records and processes'. In the main party hearing, however, Sky explained that a broadcaster would also need to 'engender a spirit in the organisation that takes the [Broadcasting] Code seriously and to employ people and continually train them so they are aware of their responsibilities'. Sky also said that ensuring 'governance measures were in place and up to date' is relevant.⁴⁸⁸

14.120 Paragraphs 14.121 to 14.125 set out the ex ante controls that Sky has in place to promote and support the broadcasting standards objectives and compliance with the Broadcasting Code while paragraphs 14.126 to 14.129 outline the steps that Sky takes in reaction to occasions where its compliance has fallen short.

14.121 Sky has an Editorial and Compliance team, made up of 28 permanent members of staff. Sky News has its own dedicated compliance lead for monitoring compliance with the Broadcasting Code.

⁴⁸⁷ [The NUJ](#), for example, emphasised that 'Sky News offers a high quality service and should continue to occupy its distinct place in the media landscape'. The NUJ also raised concerns that the transaction may pose a threat of Sky's existing workplace culture. The NUJ submitted that allowing 'Murdoch family to increase their control of Sky risks undermining ... its future as a broadcaster of integrity and high standards'.

⁴⁸⁸ [Summary of the hearing with Sky](#).

- 14.122 The Editorial Policy and Compliance Team views all non-live programming content on the Sky channels and monitors compliance with the Broadcasting Code. The team is the main point of contact for broadcasting standards issues and viewer complaints about content and standards in relation to non-news content. Sky has technical arrangements in place to make sure that content is not broadcast or that it is interrupted where it may breach the broadcasting standards. This includes some live non-sport programmes that are transmitted with a delay, where Sky will monitor the content with the ability to edit sound and/or vision as necessary. [REDACTED].
- 14.123 Sky told us that the senior editorial staff that work for Sky News and supervise the output are experienced journalists who are aware of their obligations at law and under the Broadcasting Code. Training on the broadcast content and standards rules and regulations is delivered to a range of Sky departments dealing with content via an E-Learning programme. [REDACTED]. Sky also submitted that bespoke training is offered throughout the year [REDACTED], covering all relevant aspects of the law, the Broadcasting Code and Sky News Editorial Guidelines.
- 14.124 Sky submitted that its commitment to impartial and accurate journalism has informed its internal governance and operational framework. It said that it has chosen to reinforce the standards in the Broadcasting Code in the Sky News Editorial Guidelines. These state:
- (a) 'not allowing our personal views or opinions to form a part of our coverage;
 - (b) making sure views and facts are not misrepresented;
 - (c) making sure all significant opinion is duly reflected on any controversial issues;
 - (d) making sure any personal interest of a reporter or presenter is made clear to viewers – they must not use their position to express their own views;
 - (e) members of staff have a duty to disclose to senior management any personal interest which may potentially jeopardise their duty to report with due impartiality;
 - (f) making sure particular views and opinions are not given undue prominence over others.'
- 14.125 Sky told us that the Sky News Editorial Guidelines prevent Sky from allowing personal views to form part of its coverage and include a commitment to not

show favour to, or be influenced by, any side of the story. In addition to the Sky News Editorial Guidelines, the Sky Editorial Policy and Compliance Team makes available guidance to internal producers and third party production companies.

- 14.126 Sky told us that as soon as it is made aware of a complaint by Ofcom, it would begin its internal investigation. This would involve:
- (a) reviewing the incident and taking an informed view on whether there has been a breach of the Broadcasting Code;
 - (b) depending on the circumstances, Sky might decide to take immediate action and inform Ofcom of the steps taken to avoid further concerns. For instance, if Ofcom raised a concern about a promotion being run, Sky may investigate and decide to no longer broadcast and inform Ofcom of the same when responding to the request for the tape;
 - (c) in some circumstances, Ofcom may then decide not to investigate and will consider the matter to have been formally resolved.
- 14.127 Sky submitted that any time Ofcom issues a request for information or launches a formal investigation (in relation to a potential breach), it will be notified internally to senior management, including Gary Davey (Managing Director of Content) and John Ryley (Head of Sky News) via Sky's weekly Compliance Ofcom Update.
- 14.128 Sky provided an example of an Ofcom report, which details its response to a complaint about the use of offensive language in a news report about protests against President Donald Trump. Our summary of the detail of the complaint is set out here:

Complaint

The live footage of one demonstration featured a protester holding a banner that read 'Trump is a c**t'. This was visible for approximately three seconds. Ofcom considered this raised potential issues under Rule 1.14 of the Code which states: 'The most offensive language must not be broadcast before the watershed...'. Ofcom requested comments from the Licensee on how the programme complied with this rule.

Response from Sky

Sky said that the program was after 7:00pm at night on a news programme largely dedicated to politics, public policy, and foreign news and therefore was unlikely to attract children.

Sky said that 'the movement of the protestors, as well as the fact it was dark, militated against us.' Sky also said that the broadcast was being overseen from a gallery in Millbank where 'the screens are smaller and slightly less clear than in our usual gallery' and therefore the offensive language was not 'immediately picked up by the Output Editor or the Director'. However, Sky added that 'shortly after the live pictures went out, one of the gallery staff raised a concern that there may have been an offensive banner in the crowd' and the gallery staff consequently confirmed the inclusion of the offensive language when they checked the footage during the next commercial break. Sky took the view that 'by the time the content of the banner had been confirmed too much time had elapsed to make an apology beneficial to the viewer'. It said it had also decided not to return for further live coverage of the Cardiff demonstration later that day.

Further, and in conclusion, Sky said that '[e]ven before the period of regular demonstrations against President Donald Trump in the post-inauguration period, it reminded all the staff of the importance of being vigilant over protest banners and placards both on video and in live situations' and 'of the need to be alert to the dangers of live broadcasting'.

Ofcom decision

Ofcom reported that it took into account that: the report was live; the offensive language appeared on screen relatively briefly; and, on becoming aware of the incident, Sky decided not to broadcast further live from this demonstration. Following the incident Sky had also warned its programme teams to be vigilant for any similar banners in Sky News content.

For all these reasons, Ofcom's Decision was that the matter was resolved.

14.129 The correspondence between Ofcom and Sky and the final decision provides insight into Ofcom's regulatory approach and Sky's approach to broadcasting standards in the UK. Ofcom's final decision demonstrates how it applies flexibility in enforcing the Broadcasting Code and takes the context surrounding the content into consideration. Sky, in its response, outlined the immediate remedial actions it had taken in relation to this incident to prevent broadcasting material that may have breached the Broadcasting Code further. Our view is that this approach and example reflects positively on its editorial team's understanding of and compliance with the Broadcasting Code.

Summary of the steps Sky has taken to promote and support the broadcasting standards objectives

14.130 Our review of Sky's internal policies, systems and procedures indicated that it has in place effective measures that embed the broadcasting standards objectives across the business. Sky's Editorial Policy and Compliance Team consist of experienced, knowledgeable staff whose actions and reactions demonstrate an understanding and appreciation of what is required of a licensee broadcasting in the UK. The policies, systems and procedures in place enable staff to make important editorial and compliance decisions and help ensure that Sky fulfils these obligations of promoting and supporting the broadcasting standards objectives. The regular training of Sky staff and the production of guidelines in which the provisions of the Broadcasting Code are enshrined is further evidence of Sky's efforts and commitment to attaining the broadcasting standards objectives. All of the policies, systems and procedures and how they are integrated, taken as a whole, reflect an attitude and culture that goes beyond just simple compliance with the Broadcasting Code.

Sky's record of compliance with the Broadcasting Code

14.131 Sky breached the Broadcasting Code 27 times between 2013 and 2017 (11 breaches were recorded as resolved). None of the breaches were considered sufficiently serious to warrant a sanction.⁴⁸⁹ We note that Sky breached COSTA three times, and the BCAP Code once over the same period, however as previously mentioned, Ofcom views breaches of these codes to be of 'lower degree of severity and gravity' compared with breaches of the Broadcasting Code.

14.132 Table 14.3 outlines the number and nature of the breaches of the Broadcasting Code by Sky during this period, and Figure 14.4 sets out the breaches by channel.

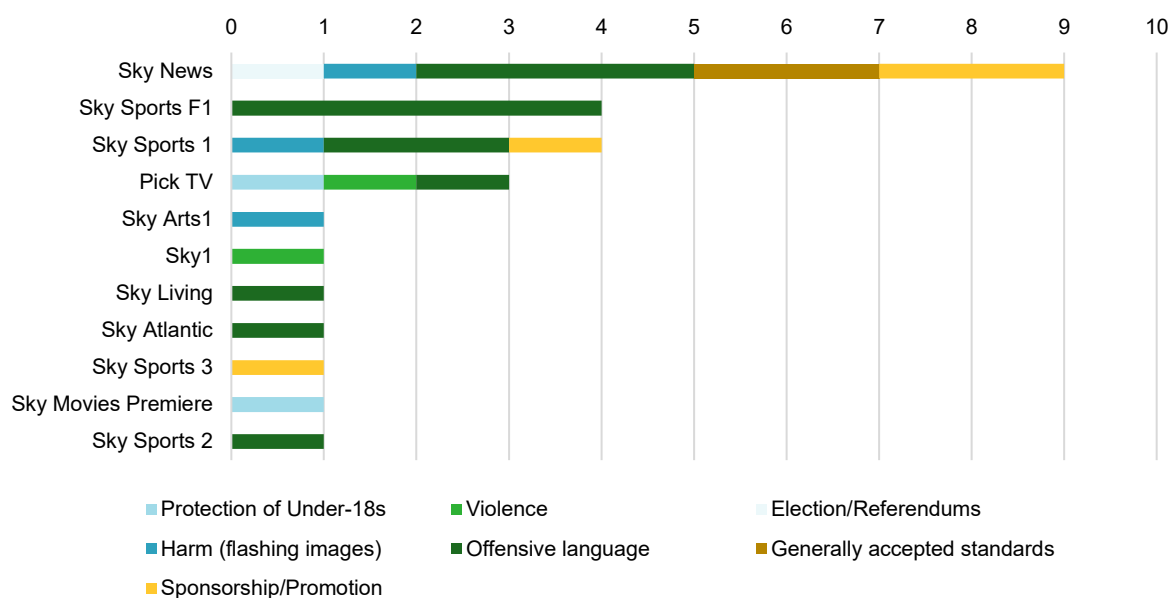
Table 14.3: Breaches of the Broadcasting Code recorded against Sky between 2013 and 2017

<i>Nature of issue</i>	<i>Breached</i>	<i>Resolved</i>
Protection of under 18s	2	1
Violence	2	-
Harm (flashing images)	3	-
Offensive language	5	8
Generally accepted standards	-	1
Sponsorship/Promotion	3	1
Election/Referendums	1	-
Total	16	11

Source: CMA analysis of Ofcom data.

⁴⁸⁹ Ofcom may impose a statutory sanction if a broadcaster breaches the Broadcasting Code deliberately, seriously, repeatedly or recklessly.

Figure 14.4: Number of breaches of the Broadcasting Code recorded against Sky, by channel and type of breach between 2013 and 2017



Source: CMA analysis of Ofcom data.

14.133 As can be seen from Table 14.3, just under half the breaches recorded against Sky (13 of the 27), related to the use of offensive language. Other breaches related to the inappropriate use of commercial references in TV programming and the showing of content with flashing images without issuing adequate warning. Sky was found to have breached the special impartiality requirements applied at the time of elections and referendums once, when it failed to list all of the candidates standing in the Vauxhall constituency for the June 2017 general election.

14.134 As noted in paragraphs 13.12 and 14.116, Ofcom compared Sky's compliance record with that of Viacom and Discovery and suggested that Sky's compliance record was 'particularly good'.⁴⁹⁰ For our assessment, we compared Sky's record with that of the BBC, ITV and Channel 4.⁴⁹¹ We chose these comparators because, like Sky, all of them are based in the UK, and primarily produce content for UK audiences. We also note that BBC News, ITV News and Channel 4 News, like Sky News, focus coverage on UK news and current affairs are aimed at UK audiences.

14.135 Table 14.4 and Figure 14.5 set out the breaches recorded against all four broadcasters across all their TV channels.

⁴⁹⁰ Ofcom, [Public Interest Report](#), page 96.

⁴⁹¹ The BBC has only been subject to Ofcom regulations on due impartiality and due accuracy since 3 April 2017, with the responsibilities passing from the BBC Trust to Ofcom, under the new Royal Charter and Agreement. As part of Ofcom's new responsibilities, they have published an operating framework containing provisions to secure effective regulation of the BBC.

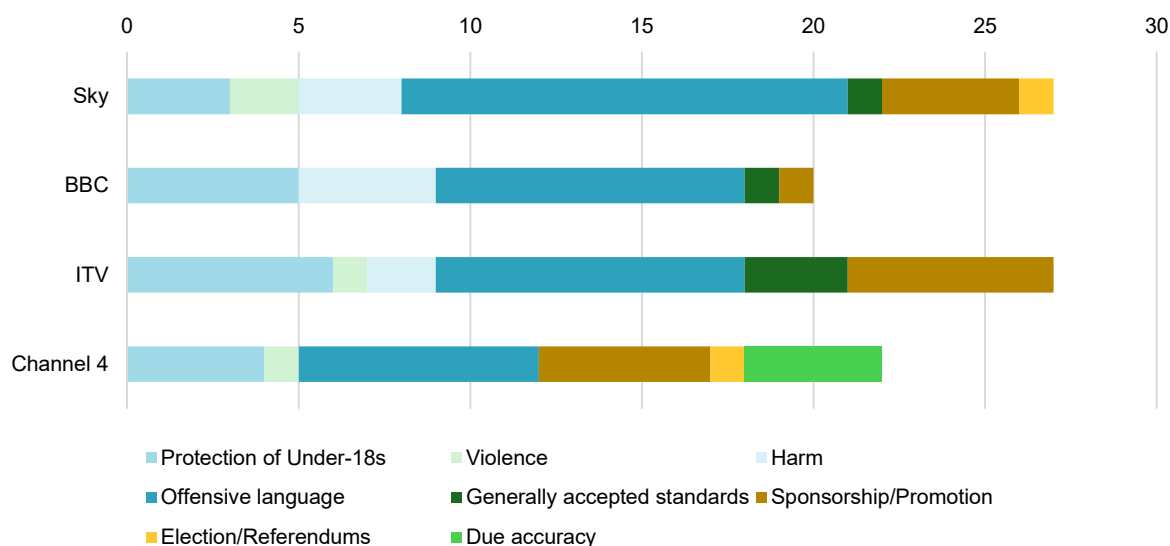
Table 14.4: Breaches of the Broadcasting Code recorded against Sky, the BBC, ITV and Channel 4 between 2013 and 2017

Nature of issue	Sky		BBC*		ITV		Channel 4	
	Breached	Resolved	Breached	Resolved	Breached	Resolved	Breached	Resolved
Protection of under 18s	2	1	4	1	5	1	3	1
Violence	2	-	-	-	-	1	1	-
Harm (flashing images)	3	-	2	-	-	-	-	-
Harm (competitions)	-	-	-	-	-	1	-	-
Harm (discrimination)	-	-	2	-	-	-	-	-
Harm (voting)	-	-	-	-	1	-	-	-
Offensive language	5	8	2	7	-	9	4	3
Generally accepted standards	-	1	-	1	3	-	-	-
Sponsorship/Promotions	3	1	1	-	6	-	5	-
Elections/Referendums	1	-	-	-	-	-	1	-
Due accuracy	-	-	-	-	-	-	4	-
Total	16	11	11	9	15	12	18	4

Source: CMA analysis of Ofcom data.

* Note that Ofcom found the BBC in Breach/rResolved 32 times, including BBC Global News Limited, or in 31 cases in respect of the BBC's licence fee funded-services. The 20 (of the 32) breaches outlined in this table relate to TV services. The other 12 breaches relate to the BBC's radio services.

Figure 14.5: Breaches of the Broadcasting Code recorded against Sky, the BBC, ITV and Channel 4 between 2013 and 2017



CMA analysis of Ofcom data.

14.136 In addition to the breaches of the Broadcasting Code outlined in Table 14.4 and Figure 14.5, we note Channel 4 has breached COSTA twice, and ITV has breached COSTA once and the BCAP Code once. Sky's record in relation to COSTA and the BCAP code is on a par with these broadcasters (see paragraph 14.131).

14.137 We compared Sky's compliance record with that of the BBC, ITV and Channel 4. Sky News' compliance record compares well against its peers. Although Ofcom has recorded more breaches against Sky for content broadcast on the Sky News channel than its comparator's news programmes – (nine for Sky, four for all BBC news content, two for ITV and five for Channel 4), we do not think the difference is material given that:

- (a) the BBC has only been subject to the provisions on due accuracy and due impartiality since April 2017;
- (b) Channel 4 has breached the provisions concerning accuracy and impartiality five times in the past five years. It has also been sanctioned by Ofcom for repeated breaches of rule 5.1, the only sanction for repeated breaches of section five of the Broadcasting Code in the last five years; and
- (c) neither ITV or Channel 4 have 24-hour news channels like Sky News.

Sky News' record of compliance with the Broadcasting Code

14.138 Sky News has breached the Broadcasting Code nine times between 2013 and 2017. See Appendix L for details of these breaches. Special impartiality requirements apply at the time of elections and referendums. One of Sky's recent breaches related to a programme in which Sky failed to list all of the candidates standing in the Vauxhall constituency during a report on tactical voting. Sky told Ofcom it was 'entirely aware' of the need to carry a full list of candidates in any constituency report, and had done so on numerous occasions throughout the election campaign. It said that this case was an 'aberration rather than regular practice' which it argued had not come about due to lack of guidance.⁴⁹²The evidence suggests that this breach was a technical error rather than any suggestion of bias.

14.139 Table 14.5 sets out the number of breaches of the Broadcasting Code over the past five years in relation to news and current affairs TV programmes broadcast on Sky, the BBC, ITV and Channel 4.

Table 14.5: Breaches of the Broadcasting Code in relation to news and current affairs programmes broadcast on Sky, the BBC, ITV and Channel 4 between 2013 and 2017

<i>Nature of issue</i>	<i>Sky</i>		<i>BBC</i>		<i>ITV</i>		<i>Channel 4</i>	
	<i>Breached</i>	<i>Resolved</i>	<i>Breached</i>	<i>Resolved</i>	<i>Breached</i>	<i>Resolved</i>	<i>Breached</i>	<i>Resolved</i>
Protection of under 18s	1	-	-	1	1	-	-	-
Harm (flashing images)	1	-	-	-	-	-	-	-
Offensive language	1	2	-	1	-	1	-	-
Generally accepted standards	-	1	-	1	-	-	-	-
Sponsorship/Promotion	2	-	1	-	-	-	-	-
Election/Referendums	1	-	-	-	-	-	1	-
Due accuracy	-	-	-	-	-	-	4	-
Total	6	3	1	3	1	1	5	-

Source: CMA analysis of Ofcom data.

⁴⁹² As published in Ofcom's Broadcast and On Demand Bulletin 334.

- 14.140 More breaches have been recorded against Sky News than news and current affairs programmes broadcast on the BBC, ITV and Channel 4.
- 14.141 Ofcom has recorded one breach against ITV national and international news and one breach against ITV London. Both related to the protection of under 18s.
- 14.142 Four breaches have been recorded against the BBC in news and current affairs programmes. Ofcom has not imposed sanctions on the BBC for any of these breaches. The majority of the breaches related to the use of offensive language and the broadcast of content unsuitable for under 18s, falling under section one and section two of the Broadcasting Code. The BBC was found to have infringed section nine of Broadcasting Code which relates to inappropriate use of commercial references in programming. While Ofcom has not recorded any breaches of section five or six of the Broadcasting Code, as mentioned previously the BBC has only been subject to these two provisions since April 2017. Since then, the BBC's Editorial Complaints Unit upheld complaints about an item broadcast on the Today programme on Radio 4, in which Lord Lawson gave an opinion on climate change that was left unchallenged.⁴⁹³ The BBC admitted that a segment of the programme had breached its own editorial guidelines on accuracy and impartiality by allowing Lord Lawson to claim, unchallenged, that global temperatures have not risen in the past decade.⁴⁹⁴
- 14.143 Five breaches have been recorded against Channel 4's news and current affairs programmes in the past five years, four of which were breaches of the due accuracy provisions and one of section six of the Broadcasting Code on special impartiality (elections/referendums). See Appendix L for details of these breaches. When in 2015 Channel 4 breached rule 5.1 of the Broadcasting Code⁴⁹⁵ for the third time in 12 months, Ofcom asked Channel 4 and ITN (the producers of the content) to attend a meeting to discuss the requirements of the rule. Following that discussion, however, Channel 4 News breached the same rule again in its reporting of the Westminster terror attack in March 2017.
- 14.144 As a result of the repeated breaches of the same provisions of the Broadcasting Code, Ofcom sanctioned Channel 4 by directing the 'Licensee to broadcast a summary of Ofcom's decision in a form and manner to be decided by Ofcom'. This is the only time in the last five years that a

⁴⁹³ See [BBC complaints report](#).

⁴⁹⁴ As reported by [the BBC](#).

⁴⁹⁵ See Appendix C for details of section five of the Broadcasting Code.

broadcaster has been sanctioned for breaching the provisions on due accuracy or due impartiality.

Summary of the compliance records of Sky and Sky News

14.145 In the past five years, Sky News has not infringed the Broadcasting Code's requirements on due accuracy and due impartiality. It has recently breached section six of the Broadcasting Code on special impartiality. Evidence suggested this was a result of human error rather than any bias on part of Sky, or issues with policies, systems and procedures or the knowledge and culture of compliance at Sky.

14.146 Ofcom recorded more breaches against Sky than against the other three broadcasters (the BBC, Channel 4 and ITV). However, we consider that the difference in the absolute number of breaches should be considered in conjunction with a number of factors. First, the BBC has only been subject to the due impartiality and due accuracy provisions of the Broadcasting Code since April 2017 and therefore has not been subject to the same regime as the other broadcasters. Second, although Ofcom has recorded five fewer breaches for Channel 4 than for Sky, Channel 4 has been sanctioned by Ofcom for repeated breaches of Section Five of the Broadcasting Code. Finally, neither ITV or Channel 4 have 24-hour news channels like Sky News. Based on these considerations, we do not think that Sky's compliance record is materially worse than that of these three comparable broadcasters operating in the UK.

14.147 On the basis of our examination of the evidence, our view is that Sky's compliance record in the past five years is broadly in line with comparable broadcasters.

Provisional conclusion on Sky's genuine commitment to the attainment of the broadcasting standards objectives in the UK

14.148 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 their regulatory obligations and their responsibilities under Sky's internal systems. Sky has in place procedures to check and monitor content before it is aired. Sky trains its staff on a range of issues including the Broadcasting Code and the broadcasting standards objectives; Sky has written guidelines to help staff understand the legal and regulatory

framework in which they operate; and Sky has in place effective policies to remedy any compliance issues if they do arise.

- 14.149 Across its 54 licences, Sky has breached the Broadcasting Code 27 times in the past five years. None of the breaches were sufficiently serious to warrant a sanction. Sky's record of compliance with the Broadcasting Code is broadly on par with comparable broadcasters like the BBC, ITV and Channel 4. Our review of Sky's breaches did not identify any issues across Sky's 54 licences.
- 14.150 Sky News' record of complying with the Broadcasting Code is on a par with other major news providers in the UK like BBC News, ITV News and Channel 4 News. Sky News is a 24-hour news channel and it has only once breached the provisions on due impartiality, due accuracy or special impartiality in the past five years.
- 14.151 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.

15. Approach to broadcasting standards outside the UK

- 15.1 The broadcasting standards objectives and the Broadcasting Code are unique to the UK in their precise form and content. Broadcasting standards differ from one country to another. Different countries have different laws, regulations and regulatory frameworks and the enforcement of broadcasting standards depends on each country's political, economic and cultural makeup. Nevertheless, a review of the Parties' approach to broadcasting standards in jurisdictions outside the UK is relevant to our assessment of the broadcasting standards consideration as it could reveal a broader indication of the approach of the Parties generally to compliance with broadcasting standards. We examined the Parties' policies, systems and procedures, and then looked at their track record of complying with broadcasting rules and regulations in other jurisdictions. We also contacted media regulators in other jurisdictions to seek their views on Fox's compliance record and approach. In assessing the Parties' records of and approach to compliance outside the UK, we keep in mind that no broadcasting standards regime in another jurisdiction mirrors exactly that in the UK.

Fox's approach to broadcasting standards outside the UK

Overview of Fox's offering outside the UK

15.2 Fox is a global media company providing cable network programming, TV and filmed entertainment, with interests in over 500 channels in over 170 countries. Other than in the US where most Fox content is produced, and India where it has a significant presence with its network of STAR channels, Fox operates and distributes content in other jurisdictions in a manner similar to the UK. Outside the US, Fox channels are principally distributed by FNG, National Geographic and STAR network channels. Although Fox has interests in over 170 countries, 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 (the Directive),⁴⁹⁶ Fox is only required to hold a licence in any one EEA country in order to broadcast to any other country in the EEA.⁴⁹⁷

FNG and National Geographic channels

15.3 FNG Latin America channels are broadcast in 37 countries but Fox is only directly responsible for compliance with broadcasting standards in three of these countries: Argentina, Brazil and Mexico. Likewise, FNG Europe and Africa distributes more than 150 TV channels and premium sports channels which are broadcast in over 90 countries in Europe and Africa. However, none of the FNG channels operating in Africa are required to hold a licence.

15.4 In the EEA, the majority of FNG's channels are broadcast through licences held in Bulgaria, Spain, the UK and Italy.⁴⁹⁸

15.5 FNG Asia and Middle East broadcasts TV programming covering approximately 50 countries. Fox owns Fox Sports Asia, a sports broadcaster in Asia which operates approximately 20 channels in different languages. Fox is only required to hold a licence in eight countries, and is only directly responsible for compliance with broadcasting standards in six of those countries. For the other two countries in which Fox holds a licence – Japan

⁴⁹⁶ EC Directive 2010/13/EU.

⁴⁹⁷ Under the 'country of origin' principle, the licence holder is required to comply only with the broadcasting standards of the country in which it holds the licence while being able to broadcast to all of the countries in which the Directive has effect. While local variations still exist to the extent permitted by the Directive, there is a large degree of harmonisation between Member States. See article 3 EC Directive 2010/13/EU.

⁴⁹⁸ Fox holds a few country-specific individual licences in the EEA. For example, in France, it has a licence for the Voyage channel as this is the only country in which this channel is aired.

and Singapore – Fox is not directly responsible for broadcasting standards compliance because Fox distributes its channels through multichannel video programming distributors who themselves must be licensed by the relevant broadcast regulator.

STAR India

- 15.6 STAR India develops, produces and broadcasts 62 channels in eight languages, which are distributed primarily via satellite to local operators in Asia, Europe, North America, the Middle East and parts of Africa. For the 49 countries not within the EEA, Fox is required to hold a licence for STAR India in only two of these countries: India and Nepal. The licences to broadcast in nine EEA countries are held in the UK. Accordingly, Fox is directly responsible for compliance with broadcasting standards in only three of the countries in which STAR India is broadcast: India, Nepal and the countries of the UK.

Fox News

- 15.7 Fox News is a US cable network broadcast via a single feed, ie the same content is broadcast to all viewers in the US. The US has far less regulation around the content of broadcasting material than the UK or other EU countries. The Federal Communications Commission (FCC) – the federal agency responsible for regulating broadcasting in the US – is limited by the US Constitution in its scope to regulate content standards. The FCC's regulatory responsibilities are contained in *The Public and Broadcasting (the Manual)*.⁴⁹⁹ The First Amendment prohibits the FCC from censoring broadcast material and from interfering with freedom of expression in broadcasting.⁵⁰⁰ The Manual notes, for example, that the First Amendment's guarantee of freedom of speech protects programming that stereotypes or may otherwise offend people with regard to religion, race, national background, gender, or other characteristics. The FCC's role on content regulation is thus largely restricted to enforcing laws that preclude the broadcasting of obscene or indecent material.⁵⁰¹
- 15.8 With respect to the broadcasting of news content, the US no longer requires broadcasters to be impartial; the so called 'fairness doctrine' was removed under the Reagan administration in the 1980s.⁵⁰² The Manual notes that while

⁴⁹⁹ FCC, [The Manual](#).

⁵⁰⁰ FCC, [The Manual](#). see chapter on *Broadcast programming: basic law and policy*.

⁵⁰¹ There are a small number of regulations that relate to content, such as obligations to identify programme sponsors, to limit commercials shown during children's content, and to provide access to the airwaves for certain political candidates. In addition, there are rules prohibiting cigarette advertising and about when telephone conversations may be broadcast.

⁵⁰² See [Fairness doctrine: history and constitutional issues](#) for an explanation of the Fairness Doctrine.

the FCC often receives complaints about broadcasting journalism (and the distortion of news), the FCC will generally not intervene in such cases because it would be inconsistent with the First Amendment to replace the journalistic judgement of licensees with the FCC's own judgement. Absent a compelling, evidenced case that a broadcast licensee has intentionally distorted the news, the FCC will not intervene. Viewers who are offended by content are advised to contact the relevant broadcast station directly.⁵⁰³

- 15.9 Fox News is simulcast from the US to over 100 countries via an international feed. Outside of the EEA, Fox News can be viewed in over 90 countries, where it is typically distributed by a licensed distributor. In most of these countries, the distributor is the licence holder and responsible for compliance with local broadcasting standards. In the EEA, Fox News formerly broadcast into other EEA countries using its UK broadcast licence and was subject to UK regulatory jurisdiction. Since ceasing to broadcast in the UK, Fox News now has broadcasting authorisation in Italy, and broadcasts into other EEA countries (other than the UK) using that authorisation. Fox is only directly responsible for broadcasting standards compliance for Fox News in Argentina, Mexico, Hong Kong, Taiwan, Korea and Italy.

Fox's compliance arrangements outside the UK

- 15.10 Fox's compliance arrangements outside the UK mirror Fox's approach to compliance in the UK. It has different policies for each of: (i) Fox News; (ii) FNG and National Geographic channels; and (iii) STAR channels. Fox News has limited policies, systems and procedures in place to monitor compliance with the local broadcasting rules of the countries into which it broadcasts. We note that Sky News International which simulcasts content outside of the UK also has limited country-specific policies, systems and procedures, relying instead on its compliance with UK broadcasting standards.
- 15.11 As in the UK, the compliance arrangements for the FNG and National Geographic channels for broadcasting in countries outside the UK are more detailed than the procedures in place at Fox News and take account of local standards, rules and regulations. Finally, the arrangements for STAR channels are exactly the same as in the UK, insofar as it is the same team based in India that manages the compliance of content broadcast in other countries.
- 15.12 All legal and compliance issues involving Fox News are handled centrally from its offices in New York. As Fox News is only directly responsible for

⁵⁰³ FCC, [The Manual](#). see chapter on *Broadcast programming: basic law and policy*.

compliance with broadcasting standards in a handful of the countries in which Fox News is broadcast, Fox News' legal and compliance team only receives training on legal and compliance issues in jurisdictions where Fox News is the licence holder. However, as noted in paragraph 14.37, no member of the Fox News' compliance team received training on the Broadcasting Code prior to the introduction of the new compliance arrangements in May 2017. The inclusion of Fox Extra inserts during advertisement breaks on its international feed is designed to minimise advertising related compliance issues in other jurisdictions.⁵⁰⁴

15.13 The content on FNG and National Geographic channels is mostly pre-recorded and produced in the US. Fox submitted that its broadcasting standards compliance processes for FNG channels in countries other than the UK and US reflect relevant local broadcasting standards requirements: in each case provisions are in place to review and edit content before broadcast where appropriate and necessary.

15.14 We saw evidence outlining Fox's compliance arrangements in the regions in which it operates.⁵⁰⁵ Fox submitted guidelines, compliance processes and memorandums for a number of countries in the Europe, Middle East and Africa' (EMEA) regions. Fox also submitted an overview of FNG's broadcasting standards compliance process for its broadcasting activities in Asia-Pacific and the guidelines for FNG Latin America (covering the relevant rules relating to advertising, promotional and marketing issues). For Latin America, Fox told us that it 'ensures that all departments in Latin America are duly trained in the regulatory obligations that affect its activities in the region' and that 'the programming department is trained on any content quota compliance, parental ratings, and any other applicable regulations, the advertising sales and advertising sales administration teams are trained in the rules relating to advertising in each country'.

Fox's compliance record outside the UK

15.15 We considered the compliance record of Fox outside the UK. Although a number of third parties raised concerns regarding Fox's commitment to broadcasting and regulatory standards, the submissions largely focused on Fox's conduct in the UK and the US.⁵⁰⁶

⁵⁰⁴ See for paragraph 2.39 more detail.

⁵⁰⁵ The FNG region are: Latin America; Europe and Africa; and Asia and Middle East.

⁵⁰⁶ The [NUJ for example submitted](#) that 'the evidence suggests that there is a lack of commitment to improve standards, comply with appropriate regulatory frameworks or adhere to corporate governance best standards' and that 'the consistency of the patterns suggests the explanation is a specific culture set by the very top'.

15.16 Fox told us that its services have breached local broadcasting rules [redacted] times in the past five years in ten jurisdictions: Argentina, Brazil, Bulgaria, India, Indonesia, Italy, Netherlands, South Korea, Taiwan and Turkey. Table 15.1 provides a breakdown of the number of breaches by country.

Table 15.1: Breaches of broadcasting standards in countries outside the UK by Fox between January 2013 and October 2017

<i>Country</i>	<i>Number of breaches</i>
Turkey	[redacted]
Argentina	[redacted]
India	8
South Korea	5
Brazil	4
Bulgaria	4
Italy	4
Taiwan	4
Indonesia	2
Netherlands	1
Total breaches outside of the UK	[redacted]
UK	16

Source: CMA analysis of Annex 29.2, Fox's response to opening day letter.

15.17 Not including the UK, Fox has breached broadcasting standards in the EU nine times between 2013 and 2017: four times in Italy, once in the Netherlands and four times in Bulgaria. In Italy, each breach related to rules limiting advertising, and on each occasion a fine was levied. For these four breaches, the Italian media regulatory authority issued fines to Fox totalling €82,632. The breach in the [redacted].

15.18 The four breaches in Bulgaria were all different in nature. The breaches resulted from Fox broadcasting:

(a) [redacted]; this led to a fine of €1,500;

(b) [redacted]; this led to a fine of €7,500;

(c) [redacted]; this led to a fine of €4,500;

(d) [redacted]. This led to a fine of €1,500.⁵⁰⁷

15.19 [redacted] of the [redacted] breaches by Fox in jurisdictions other than the UK were in Argentina and Turkey.

15.20 In the past five years, Fox has breached broadcasting standards [redacted] times in Turkey, where it has a significant presence, broadcasting thousands of hours of local content programming, including the number one news programme in Turkey. This was confirmed by the Turkish Radio and

⁵⁰⁷ The first of these breaches has been successfully appealed by Fox. The second and third breaches are currently under appeal.

Television Council (RTUK). Most of the breaches related to content in which defamatory statements were made against individuals or organisations. Other breaches covered a range of other issues, including broadcasting content that was unsuitable for minors and advertising related infringements.

- 15.21 Fox told us that [REDACTED]. With respect to news coverage, Fox submitted that its record of penalties is at least comparable to equivalent broadcasters in Turkey.⁵⁰⁸ We have contacted RTUK and taken Fox's comments into account in considering Fox's record of compliance with broadcasting standards in Turkey.
- 15.22 Fox has breached broadcasting standards [REDACTED] in the past five years [REDACTED]. We asked Fox for further detail about this record. Fox told us that Argentina's media law is under review; [REDACTED].
- 15.23 Other than in Turkey and Argentina, Fox has not had that many breaches of broadcasting rules or standards in jurisdictions outside the UK in the past five years. Fox has not breached broadcasting rules in the US, where it is based. However, as outlined earlier, in contrast to the UK and other EU countries, the US has very limited content regulation.⁵⁰⁹

Views of media regulatory authorities outside the UK

- 15.24 To help contextualise Fox's record of compliance in overseas jurisdictions and to verify information provided by Fox, we wrote to 16 international media regulators to obtain their views on Fox's approach to broadcasting standards and compliance within their respective jurisdictions:
- (a) the regulatory authorities of Argentina, Brazil, Bulgaria, India, Indonesia, Italy, the Netherlands, South Korea, Taiwan and Turkey (the ten countries in which Fox told us that they had breached broadcasting rules);
 - (b) the FCC in the US;
 - (c) the media regulatory authorities in Germany, France, Spain and Iceland (as these were some of the countries in which Fox said that it had not breached broadcasting standards);⁵¹⁰ and

⁵⁰⁸ For example, in 2016, Fox had a total of 15 penalties, compared to 25 penalties for STAR TV (a Turkish nationwide TV channel. Owned by Ferit Şahenk, Doğuş), 21 penalties for Kanal D, and 11 penalties for ATV.

⁵⁰⁹ See paragraph 3.7.

⁵¹⁰ We selected Germany, France and Spain as they are major European countries and have broadcasting standards similar to the UK (Germany and France both have similar impartiality provisions relating to the reporting of news; and Fox holds multiple licences in Spain which enables it to broadcast to other EEA countries). For completeness, we also selected Iceland as it is another European country in which Fox content is broadcast.

(d) the Australian Communications and Media Authority (ACMA) (because we considered News Corp's broadcasting compliance in Australia, see paragraphs 15.44 to 15.47).

15.25 Eight regulators responded in writing (Taiwan, Italy, Bulgaria, the Netherlands, Australia, Turkey, Spain and Iceland) and we spoke with [REDACTED]. Seven of the eight regulators who responded provided information that confirmed the accuracy of Fox's submissions on its breaches of broadcasting rules. The eighth, Turkey, was unable to provide us with data and instead referred us to the RTUK website where its decisions are published. Only the National Communications Commission of Taiwan (NCC) and the Spanish National Authority for Markets and Competition (CNMC) commented on Fox's overall compliance record or approach and commitment to broadcasting standards.

15.26 The NCC said that although 'the compliance record indicates the Fox group is not perfect, there is no evidence shows (sic) the Fox is not genuinely committed to the broadcasting standards in Taiwan'. The NCC also noted the importance of local rules and standards: 'people's view of the same broadcasting content may vary in different territories' and indicated that an assessment of local compliance record would be a better reference for us to evaluate the Transaction.

15.27 The CNMC told us that 'Fox has complied with the Spanish audiovisual media regulation' and that it 'does not have any concern about Fox and its commitment to broadcasting standards'.

15.28 None of the evidence provided by international regulators in jurisdictions where Fox is directly responsible for compliance raised concerns regarding Fox's compliance with broadcasting standards or broadcasting regulation more generally.

Provisional conclusion on Fox's approach to broadcasting standards outside the UK

15.29 Fox had a large number of breaches in Turkey and Argentina. The approach to broadcast regulation and journalism, in Turkey in particular, is quite different from that in the UK. We therefore consider that meaningful inferences cannot be drawn regarding Fox's commitment to broadcasting standards in the UK from the statistics regarding compliance in Turkey and Argentina, given political and cultural differences. Similarly, Fox's strong compliance record in the US is of limited relevance given the minimal regulation of content in the US regime.

15.30 Overall, we concur 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.

15.31 In forming our overall view, we attach weight to the views of broadcast regulators as to compliance in their own jurisdictions, given their respective expertise and knowledge of their own domestic arrangements. Again, none of the evidence they provided indicated that Fox had a lack of commitment to local broadcasting standards in their 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 broadcasting standards objectives in the UK.

Other considerations related to assessing Fox's approach to broadcasting standards outside the UK

15.32 In addition to reviewing the compliance arrangements and record of Fox outside the UK, we also considered two specific case studies that third parties had submitted provide important evidence for our assessment of the broadcasting standards consideration. These are:

(a) allegations of misreporting by Fox in the US; and

(b) News Corp's compliance with broadcasting standards in Australia.

15.33 The first relates to alleged misreporting by Fox concerning the death of Seth Rich; and the second concerns News Corp's approach to channel management in Australia. In both cases, third parties raised concerns that the conduct of MFT controlled companies in these instances may be indicative of an approach that may be adopted by Fox post Transaction. We consider each case study in more detail below.

Allegations of misreporting by Fox in the US

15.34 Some third parties cited an example of alleged misreporting by Fox as evidence of MFT controlled companies' disregard for proper newsgathering and ethical standards. We outline the facts of the case available to us at this time and the potential relevance of it to our assessment of the broadcasting standards consideration.

15.35 On 15 and 16 May 2017, Fox broadcast interviews on its Fox 5 and Fox News channels with Rod Wheeler⁵¹¹ linking the death of former Democratic National Committee (DNC) employee Seth Rich to his (alleged) leaked emails to Wikileaks. The story was also covered online.⁵¹²

15.36 Following the Rich family's request to news providers that the story be retracted,⁵¹³ on 17 May 2017, Fox 5 published an updated editor's note stating that Mr Wheeler had 'backtracked' and that Fox 5 wanted to 'make important clarifications to the story'.⁵¹⁴ On 23 May 2017, Fox News published a retraction, stating: 'The article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed. We will continue to investigate this story and will provide updates as warranted.'⁵¹⁵

15.37 We note that Mr Wheeler has filed a lawsuit against Fox, alleging that Fox falsely attributed quotes to him. Following an investigation by external counsel into the matter, Fox has filed a motion to dismiss. At the time of writing, the matter is still ongoing.

15.38 According to third parties, Fox's conduct in this matter is directly relevant to our assessment of the broadcasting standards consideration. Ed Miliband MP told us:

I would also draw your attention to one case in relation to Fox News, the Seth Rich case ... Nothing has happened ... Tragically, it reminds one of what happened with Milly Dowler as well. You have got grieving parents, a grieving family whose lives are made even worse by the actions of Murdoch outlets. If that does not show a disregard for proper standards and proper ethical standards, I do not know what does.⁵¹⁶

15.39 Avaaz stated:

in court it is alleged that the quotes by the public investigator were concocted - intercepted with the political agenda and led to sloppy

⁵¹¹ Mr Wheeler is a private investigator appointed by the Rich family to investigate Seth Rich's death. Seth Rich was shot dead outside his home in Washington on 10 July 2016. The Rich family believes the death is linked to a robbery attempt, and it is part of an ongoing investigation by Washington's Metropolitan Police Department. For example, [as reported by CNN](#).

⁵¹² Fox News, 16 May 2017, [Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources](#). See also [Fox 5 website](#).

⁵¹³ For example as reported by [The New York Times](#).

⁵¹⁴ [Fox 5 retraction](#).

⁵¹⁵ [Fox News, Statement on coverage of Seth Rich murder investigation](#).

⁵¹⁶ [Transcript of hearing with politicians](#), page 69 lines 21 to 25 and page 70 lines 1 to 21.

material being broadcast which was then retracted by Fox ... So far, we have not seen any evidence that any sanctions or incentives have been given to prevent that happening again. That is a tight intersection of broadcasting standards, what people see on their screen and the newsgathering methods news selection.⁵¹⁷

15.40 In response to our questions on the procedures Fox had in place in the reporting of the Seth Rich story and how these were applied, Fox told us that Fox News has an editorial process for script production which allows for fact-checking and review and that where appropriate it will broadcast a correction, retraction or clarification statement. Fox explained that in this instance, the usual news gathering procedure had been followed. After the article's publication on the Fox News website, the matter was internally investigated. Fox News found that those responsible for the story did not engage in a sufficiently rigorous review of the story prior to its publication, and a retraction was authorised. Fox told us that no member of Fox senior management or the Fox board was involved in the decision to publish or subsequently retract the article.

15.41 We note that at the then Secretary of State's request,⁵¹⁸ following its phase 1 assessment, Ofcom considered further evidence received on Fox's broadcasting of the Seth Rich story. Ofcom stated in its response:

Whether it [Mr Wheeler's complaint that Fox News knowingly faked a news story for political purposes] might also be of relevance to commitment to broadcasting standards would depend on a number of factors, including in particular the degree (if any) of knowledge and culpability within Fox News beyond the journalist concerned. If evidence of wider wrongdoing were to emerge at some future date it may be significant.

The evidence at present is uncertain ... Commentators on the case have suggested it may be part of some wider wrongdoing, although we are aware of no evidence and no legal claim that this is the case.⁵¹⁹

⁵¹⁷ [Transcript of hearing with campaign groups](#), page 78 lines 17 to 23 and page 79 lines 1 to 4.

⁵¹⁸ [DCMS letter to Ofcom](#), 7 August 2017.

⁵¹⁹ [Ofcom letter to DCMS](#), 25 August 2017, Annex 2.

Provisional conclusion on allegations of misreporting by Fox in the US

- 15.42 The evidence we obtained indicated that Fox News has procedures in place to review stories for accuracy and ex post controls in place to correct, retract or clarify statements after airing on-screen or publishing online. While the application of these procedures was found wanting in the reporting relating to Seth Rich's tragic death, we note that Fox News responded by undertaking an internal investigation and subsequently retracting the story.
- 15.43 Nothing further has come to our attention since Ofcom's assessment of this alleged misreporting and, like Ofcom, we have not identified evidence to suggest that this was part of some wider wrongdoing. In that regard, we note that the court case between Mr Wheeler and Fox is still to conclude and therefore there remains some uncertainty about the relevant events. Accordingly, based on the facts available to us, we do not consider that there is sufficient evidence to suggest that an inference can be drawn from this alleged misreporting to inform our assessment of Fox or the MFT's genuine commitment to the broadcasting standards objectives in the UK. We also note that broadcasting standards and rules in the US are very different from those in the UK. In particular they do not impose requirements regarding due accuracy and due impartiality. We therefore attach greater weight to the evidence relating to Fox's approach to broadcasting standards in the UK (set out in chapter 14) in our assessment of the broadcasting standards consideration.

News Corp's compliance with broadcasting standards in Australia

- 15.44 We received a number of submissions regarding News Corp's approach to channel management in Australia. It was put to us by third parties⁵²⁰ that since News Corp's takeover of Australian News Channel (ANC) in December 2016, one of its channels – Sky News Australia – has engaged in a more partisan reporting of news and current affairs. ANC, which broadcasts the suite of Sky News channels in Australia, is a wholly owned subsidiary of News Corp,⁵²¹ and is not directly linked to Fox due to the separation of Fox and News Corp. However, given News Corp is a company controlled by the MFT, we consider that the approach of News Corp and its wholly owned subsidiaries to broadcasting standards in Australia is potentially informative to our assessment of Fox's commitment to broadcasting standards in the UK.

⁵²⁰ For example, submissions received from: Ed Miliband et al and the CPBF, available on the [case page](#).

⁵²¹ Of which the MFT own 38.4% of Class B Common Stock.

15.45 Like those in the UK, Australian broadcasting codes require news coverage and current affairs programming to be presented accurately and fairly. News coverage must also be impartial. The ACMA⁵²² sets out in published guidance that the different broadcasting codes in Australia 'do not generally deal with unlawful, unethical or distasteful journalistic practices'.⁵²³ Third parties told us that Sky News Australia is increasingly veering away from the requirements of the Australian Code (explained in paragraph 15.46) with respect to its current affairs talk show evening programming since the takeover by News Corp.⁵²⁴

15.46 In Australia, the holder of the subscription TV licence is bound by the ASTRA Subscription Broadcast Television Code of Practice 2013 (the ASTRA Code). In the case of Sky News Australia, the licensee of the subscription TV licence is Foxtel.⁵²⁵ As such, any breach of codes, standards or licence conditions resulting from material broadcast by Sky News Australia is a matter for Foxtel. In response to our information request, ACMA told us that Foxtel, the platform on which Sky News Australia is broadcast, has breached the Australian Code once since 2010.

Provisional conclusion on News Corp's approach to broadcasting standards in Australia

15.47 While it may be the case that there has been a move toward more partisan reporting of news and current affairs, Sky News Australia's approach (if indeed adopted) has not been found to have breached the ASTRA Code. With regards to the broadcasting standards consideration, we do not consider that there is sufficient evidence to suggest that any useful inferences can be drawn to inform our assessment of Fox or the MFT's commitment to broadcasting standards in the UK. We therefore attach greater weight to the evidence relating to Fox's approach to broadcasting standards in the UK (set out in chapter 14) in our assessment of the broadcasting standards consideration. More detailed analysis of Fox's compliance with broadcast regulation in Australia is set out in Appendix J.

⁵²² The ACMA is explained in paragraph 15.24(d).

⁵²³ See paper on '[Investigations concepts – Accuracy](#)'.

⁵²⁴ For example, submissions received from: Ed Miliband et al and the CPBF, available on the [case page](#).

⁵²⁵ Foxtel is 50% owned by News Corp US.

Sky's approach to broadcasting standards outside the UK

Overview of Sky's offering outside the UK

15.48 Sky operates Direct To Home⁵²⁶ platforms outside the UK in:

- (a) Ireland: Sky UK channels are distributed in Ireland via Sky's UK broadcast licences. Content broadcast in Ireland is therefore regulated by Ofcom;
- (b) Germany and Austria: Sky Deutschland content is broadcast into Germany and Austria and is subject to German broadcasting rules and standards, [§];⁵²⁷ and
- (c) Italy: Sky Italia content is broadcast into Italy and is subject to Italian broadcasting rules and standards.

15.49 In addition, Sky News International is simulcast to over 100 countries and is distributed to 'third party operators such as pay TV and free-to-air TV platforms'.^{528,529} Sky News International 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.

15.50 Sky operates its business on a country by country basis and therefore its licensing arrangements are specific to the jurisdiction in which it operates. Other than the UK, Sky is only directly responsible for compliance with local broadcasting standards in Germany, Austria and Italy. We consider these in turn in more detail.

Sky's compliance arrangements outside the UK

Sky UK and Ireland

15.51 Sky's arrangements for compliance for services broadcast into Ireland are the same as those in place for the UK. We considered these arrangements in chapter 14 (see paragraphs 14.118 to 14.130).

⁵²⁶ Direct to Home is a form of direct broadcasting, usually using satellite.

⁵²⁷ [§].

⁵²⁸ Across Europe, Africa, Middle East and North Africa, Asia and the Americas.

⁵²⁹ Sky News International Americas is a version of Sky News International that is made available in the US, Canada and the Caribbean differs in two additional respects: (i) it broadcasts alternative sports bulletins each hour (created separately by Sky Sports to address sports rights restrictions) which replace the Sky News UK sports bulletins; and (ii) it does not include the 'Sportsline' programme which is broadcast on Sky News UK at weekends (due to rights restrictions).

Sky Deutschland

15.52 In Germany, there is more than one team in place to manage compliance with different aspects of the broadcasting standards rules and regulations. These compliance teams are advised by the legal department that itself discusses compliance regularly. As well as checking programme content and the existence and efficacy of technical controls, the compliance teams ensure policies, systems and procedures are up to date. Relevant employees receive compliance training as part of their induction and receive regular training thereafter.

Sky Italia

15.53 Broadcast compliance in Italy is overseen by a team of people. It advises on broadcasting standards rules and regulations and provides regular updates on new developments. There are specific people responsible for compliance with the broadcasting standards rules that apply to the news. In addition, under Italian law, every journalist is subject to a separate code of conduct that includes rules on impartiality and accuracy. Journalists are personally responsible for compliance with this code.

Sky News International

15.54 Sky News International is licensed and regulated by Ofcom in the UK. Under the provisions of the Directive,⁵³⁰ Sky News International is only required to hold a licence in any one EEA country in order to broadcast to other EEA countries. Sky News International is broadcast in the EEA via its UK licence.

15.55 Broadcasting via its UK licence, Sky News is therefore required to comply with UK broadcasting standards and the Broadcasting Code. Outside the EU, [✂] distributors are contractually responsible for obtaining and complying with all appropriate and necessary regulatory authorisations, other permissions and licences in their territory. [✂].

15.56 Sky submitted that given the comprehensive nature of the Broadcasting Code, the specific obligations relating to news content and the embedded procedures Sky News has in place to ensure compliance, mean that the simulcast of Sky News as Sky News International is unlikely to contravene national broadcasting rules outside the UK. This has been borne out in practice.

⁵³⁰ EC Directive 2010/13/EU.

Sky's compliance record outside the UK

15.57 We reviewed the compliance record of Sky in jurisdictions outside the UK. Sky services breached local broadcasting outside the UK 18 times in the past five years: twice in Germany, three times in Austria and thirteen times in Italy.

Germany

15.58 The first breach in Germany was in 2013. Sky Deutschland broadcast a programme during the day that the German media regulatory authority deemed to be inappropriate for younger children. A fine of €200 was imposed.

15.59 In 2014, the second breach was the broadcast of an advertisement for an amusement park in which Sky's channel Sky Action was mentioned. The Media Authority considered this to constitute on-air promotion, and a fine of €1,000 was imposed.

Austria

15.60 In the past five years, Sky has breached Austrian broadcasting rules five times:

- (a) in 2017 Sky breached the Austrian advertising regulations. Two other breaches were infringements of the Austrian Law on Audiovisual Media;
- (b) one infringement, in 2017, related to Sky Austria not providing recordings requested by Komm Austria by the specified deadline. No sanction was imposed;
- (c) the other one infringement, in 2015, related to Sky Austria failing to notify the Komm Austria (the Austrian media regulatory authority) that Sky Sport Austria was broadcast in high definition as well as standard definition. Again, no sanction was imposed.

Italy

15.61 In the past five years, Sky has breached Italian broadcasting rules 13 times:

- (a) violating rules relating to hourly advertising limits on eight occasions – once in 2013, six times in 2016 and once in 2017. This led to a total of fines exceeding €790,000.⁵³¹ In addition, there was a case in 2017 where Sky Italia infringed a ban on sponsorship of news programmes;

⁵³¹ Sky said that one of the fines was reduced by more than €100,000 by the relevant authority.

- (b) violation of the provision requiring the equal treatment of political parties during elections in 2013, which attracted a fine of €50,000;⁵³² and
- (c) three breaches in relation to the protection of minors, all in 2016. Sky Italia was fined €325,000.

15.62 Sky told us that all of the nine advertising breaches were attributable to the same underlying cause: technical failures in the software utilised by Sky Italia Group companies.

Provisional conclusion on Sky's approach to broadcasting outside the UK

15.63 In our view, Sky's approach to broadcasting standards outside the UK in terms of its policies, systems and procedures and its compliance record raises no concerns about Sky's commitment to the attainment of the broadcasting standards objectives in the UK. While its record in the jurisdictions in which it has to comply with local broadcasting rules is not perfect, we note that almost all of the breaches related to advertising. 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 view is that Sky's approach to broadcasting standards outside of the UK, in terms of 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.

16. Wider regulatory compliance and corporate governance

- 16.1 In assessing the broadcasting standards consideration we have had regard to wider regulatory compliance and corporate governance at Fox and other companies controlled by the MFT and in which members of the Murdoch family hold senior positions.
- 16.2 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.

⁵³² Sky Italia is currently appealing the decision with the Administrative Court in Italy.

- 16.3 Prior to its split in June 2013, News Corp and Fox were part of the same legal entity – News Corporation. In this chapter, discussion of the activities of ‘News Corp’ that took place before June 2013 refer to this legal entity. Any reference to the activities of News Corp after June 2013 refer to the legal entity News Corp that is defined in paragraph 2.30 and used generally throughout our report.
- 16.4 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.⁵³³ The main issues of concern raised by third parties related to (i) misconduct at News Corp in connection with phone hacking prior to the Leveson Inquiry in 2011, and (ii) more recent allegations of sexual harassment and racial discrimination at Fox News in the US.⁵³⁴ 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.
- 16.5 We note that Ofcom considered wider regulatory compliance and corporate governance as part of its assessment of whether Sky would continue to be fit and proper to hold broadcast licences after the Transaction. In its fit and proper decision, published on 29 June 2017, Ofcom stated:

It seems clear that there were significant failings of the corporate culture at Fox News ... In order to have a concern about fitness and properness we would need to see evidence of misconduct in the parent company Fox. However, we have no clear evidence that senior executives at Fox were aware of misconduct before it was escalated to them. And senior executives put in place new corporate governance arrangements ... In summary, the behaviours alleged at Fox News amount to significant corporate failure, however the overall evidence available to date does not provide a reasonable basis to conclude that if Sky were 100% owned and controlled by Fox, it would not be fit and proper to hold broadcast licences.⁵³⁵

⁵³³ For example, [Avaaz in its further submission](#). Other third parties broadly supported this submission – for example, submissions received from: Ed Miliband et al; NUJ; and the CPBF, available on the [case page](#).

⁵³⁴ For example, submissions received from: Avaaz; Media Matters for America; Ed Miliband et al among others. Available on the [case page](#).

⁵³⁵ Ofcom, *Decision under section 3(3) of the Broadcasting Act 1990 and section 3(3) of the Broadcasting Act 1996: Licences held by British Sky Broadcasting Limited, published on 29 June 2017 (explanatory wording added on 11 September 2017)*, paragraphs 9 and 10.

- 16.6 The Ofcom Public Interest Report cross-referred to this fit and proper assessment stating that ‘in light of our conclusions on [the fit and proper assessment], we do not consider that this evidence [regarding alleged failures of corporate governance at News of the World, News Corp and Fox News in the US] demonstrates that the merged entity would lack a genuine commitment’.⁵³⁶
- 16.7 DCMS, setting out the reasons for the then Secretary of State’s ‘minded to’ decision to refer the Transaction to us on the broadcasting standards ground, noted that ‘it is difficult to be sure that any wider failings of corporate governance at 21CF are incapable of affecting broadcasting standards compliance’ and that ‘the representations [made in respect of the Transaction] raise concerns that the various actual and alleged failings might have been a product of a corporate culture that does not prioritise the need for regulatory compliance’.⁵³⁷ The letter continued ‘in the light of these concerns, the Secretary of State considers that this issue could usefully be considered in further detail by the CMA’.⁵³⁸
- 16.8 As outlined previously, 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 note 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 regulation relating to newspapers in the UK.
- 16.9 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.
- 16.10 In this chapter we first set out third party views on wider regulatory compliance and corporate governance at companies controlled by the MFT and in which members of the Murdoch family hold senior positions. We then

⁵³⁶ Ofcom, [Public Interest Report](#), page 100, paragraph 10.51.

⁵³⁷ [DCMS Letter to the Parties](#), 12 September 2017 page 4.

⁵³⁸ [DCMS Letter to the Parties](#), 12 September 2017 page 4.

look at the main areas of concern put to us, as set out in 16.4. We first consider the misconduct at News Corp in connection with phone hacking prior to the Leveson Inquiry in 2011, and then the record of News Corp in the UK post Leveson. We then look at complaints and settlements relating to corporate governance issues at Fox, and more recent examples of allegations concerning sexual harassment at Fox News in the US. We review how Fox dealt with these serious allegations and consider the efficacy of Fox's previous and existing policies, systems and procedures, and the timeliness and effectiveness of Fox's responses.

Submissions on wider regulatory compliance and corporate governance

16.11 Over half of the submissions received in our Inquiry referred to matters of regulatory compliance and corporate governance issues or to allegations of misconduct at companies controlled by the MFT and in which members of the Murdoch family hold senior positions, including News Corp and Fox.⁵³⁹ Many of these submissions pointed to this as evidence that the Transaction, if it went ahead, would be 'against the public interest'. For example, Ed Miliband et al submitted that 'corporate governance failures in Murdoch-controlled companies demonstrate that the MFT has so little commitment to corporate or ethical standards'.⁵⁴⁰ In a hearing with us Lord Falconer stated:

The corporate governance culture revealed in their conduct, reveals that they put commercial gain above compliance with basic corporate standards... it shows the attitude of the Murdochs...you should not believe, having regard to their record, that they are genuinely committed to complying with standards that they and the regulator say can easily be got around.⁵⁴¹

16.12 Avaaz submitted that allegations of corporate malfeasance at MFT controlled companies is 'directly linked to the Murdoch's' genuine commitment to broadcasting standards' and that evidence of corporate governance failures at these companies is relevant when assessing a genuine commitment to broadcasting standards.⁵⁴² In a hearing, Avaaz said:

... if you look across all the corporate governance failures ... you will see a pattern ... the overarching theme here is that the serial failures of corporate governance do not provide us with any

⁵³⁹ Submissions are published on the [casepage](#).

⁵⁴⁰ [Ed Miliband et al submission](#).

⁵⁴¹ [Transcript of hearing with politicians](#), page 66 lines 16 to 17 and page 67 lines 15 to 20.

⁵⁴² [Avaaz further submission to issues statement](#).

confidence that they are genuinely committed to broadcasting standards.⁵⁴³

16.13 The CPBF submitted that MFT controlled companies ‘have a poor reputation for governance and raised concerns that that the corporate culture at Fox does not prioritise the need for regulatory compliance’.⁵⁴⁴ The CPBF went on to say in a hearing that: ‘there is hard evidence of a lack of a culture that takes compliance issues seriously.’⁵⁴⁵

16.14 We note that allegations of misconduct relating to sexual harassment and racial discrimination at Fox News came to light in 2016 and 2017,⁵⁴⁶ as have allegations of bribery and corruption at Fox Sports in 2017,⁵⁴⁷ and form part of the backdrop to our ongoing Inquiry. We consider these allegations to be serious in nature and extent.

16.15 Third parties submitted that previous issues with regulatory compliance and corporate governance in relation to phone hacking at News Corp⁵⁴⁸ in the UK and the more recent allegations against Fox News in the US are evidence of the MFT’s lack of commitment to the broadcasting standards objectives. For example, Ed Miliband et al submitted that:

The failures at News International... stands as evidence of the Murdoch’s real attitude to corporate governance and regulatory compliance, and therefore of the likelihood that a company they control would be genuinely committed to ensuring Sky continues to meet UK broadcasting standards... what precisely the Murdochs knew personally cannot absolve them from responsibility for the massive lack of commitment to media standards and corporate compliance...⁵⁴⁹

... How much confidence this inspires in the new arrangements depends on a judgement about how much the personal assurances of the Murdochs are worth. We contend that the harassment scandal at Fox News suggests they are not worth much...⁵⁵⁰

⁵⁴³ [Transcript of hearing with campaign groups](#), page 70 lines 13 to 15 and page 71 lines 13 to 17.

⁵⁴⁴ [CPBF submission to issues statement](#).

⁵⁴⁵ [Transcript of hearing with campaign groups](#), page 71 lines 18 to 21.

⁵⁴⁶ For example as reported by [The New York Times](#).

⁵⁴⁷ We note a small number of third party submissions referred to allegations in 2017 of bribery and corruption at Fox Sports (among other broadcasters), related to payments to FIFA officials in an attempt to secure the broadcasting rights to major South American football tournaments. For example as reported by [The Guardian](#) and [Bloomberg](#).

⁵⁴⁸ Fox was formerly known as News Corporation – see chapter 2 for more detail.

⁵⁴⁹ [Ed Miliband et al submission to the issues statement](#), page 81.

⁵⁵⁰ [Ed Miliband et al submission to the issues statement](#), page 81.

... Again, the prospect of the concern of others at the revelations, and of their concern causing commercial and reputational damage to 21CF, seems to have been what prompted the Murdochs to dismiss O'Reilly.⁵⁵¹

16.16 In relation to allegations of sexual harassment at Fox News in the US, Avaaz submitted that the acceptance of the Fox board that former presenter Bill O'Reilly had made several personal settlements with employees in relation to allegations of sexual harassment, is evidence that the company does not abide by its stated commitment to 'meet the highest standards of corporate conduct'. Avaaz also submitted the Fox board's lack of awareness of the amount of a particularly large settlement involving Bill O'Reilly as evidence that the procedure for reporting and escalating issues to the board as part of Fox's compliance programme were not effective or properly followed.⁵⁵²

Wider regulatory compliance at MFT controlled companies

16.17 Here we consider one of the main issues of concern raised by third parties - misconduct at News Corp prior to the Leveson Inquiry in 2011 in connection with phone hacking.

16.18 News Corp previously operated through its subsidiary News International in the UK and Europe, and published some of its newspaper titles through News Group Newspapers, including the News of the World before its closure in 2011. News Corp's operations in the UK are now principally conducted through News UK.⁵⁵³ We note that Rupert, Lachlan and James Murdoch each held senior positions in News Corp,⁵⁵⁴ and continue to hold similar roles in both Fox and News Corp at present.⁵⁵⁵

⁵⁵¹ Ed Miliband et al submission to the issues statement, page 88.

⁵⁵² Avaaz, *Defiance, not compliance: the culture and behaviour of Murdoch-owned companies*.

⁵⁵³ News UK wholly owns five groups of companies that form its five main divisions: Times Newspapers Holdings Limited; News Group Newspapers Limited; Newsprinters; Wireless Group; and Unruly Holdings Ltd. Times Newspapers Holdings is the holding company for Times Newspapers Limited, which publishes The Times and The Sunday Times. News Group Newspapers owns and publishes The Sun and The Sun on Sunday. The News of the World was published by News Group Newspapers. See chapter 2 for further detail.

⁵⁵⁴ Rupert Murdoch was CEO and Chairman of News Corp; James Murdoch was Director from 2007 to 2013, Chairman and CEO, Europe and Asia from 2007 to 2011 and Deputy COO and Chairman, Europe and Asia from 2011 to 2013; Lachlan Murdoch was Director until 2013 and Deputy COO until 2005. Set out in further detail in the chapter 2.

⁵⁵⁵ Rupert Murdoch currently serves as Co-Executive Chairman of Fox, Executive Chairman of News Corp, and as of July 2016, acting CEO of Fox News; James Murdoch is currently CEO of Fox and a director at News Corp; Lachlan Murdoch is currently Co-Executive Chairman of Fox, a role held since March 2014, and Co-Chairman at News Corp. Set out in further detail in chapter 2.

Regulatory compliance at News Corp

Pre Leveson Inquiry

- 16.19 News Corp's compliance arrangements previously included its Standards of Business Conduct (the Standards) issued in 1996 and revised subsequently to provide guidance to staff on conduct and compliance; a Global Anti-Bribery and Anti-Corruption Policy issued in 2009;⁵⁵⁶ and formal reporting channels via the Audit Committee as of 2004 and 'Alertline' as of 2005, a free telephone or web service for raising concerns anonymously.
- 16.20 In 2005, evidence began to emerge of improper or unlawful conduct by certain journalists and investigators in obtaining stories for UK newspapers. The 2005 allegations related to (but were not limited to) certain News Corp titles, including the News of the World, using illicit means to obtain private information without public interest justification. This included phone hacking, impermissible payments to police or other public officials and exercising improper influence to obtain information.
- 16.21 Following investigation by the Information Commissioner's Office (ICO), two private investigators and a number of police officers were charged with conspiracy to commit misconduct in public office in connection with obtaining and selling personal information to third parties, particularly journalists. The Crown Prosecution Service (CPS) brought a series of criminal prosecutions resulting in nine convictions following police investigations into phone hacking at News UK and Mirror Group Newspaper titles.^{557,558}
- 16.22 Rebekah Brooks (then Editor of The Sun), Andy Coulson (then Editor of the News of the World) and a number of others were charged with conspiracy to unlawfully intercept telecommunications, conspiracy to commit misconduct in public office and conspiracy to pervert the course of justice. Mrs Brooks and her co-defendants other than Mr Coulson were acquitted. Mr Coulson was convicted of conspiracy to intercept voicemails and subsequently sentenced

⁵⁵⁶ The policy was revised in 2010 and 2011.

⁵⁵⁷ Operation Weeting, an operation to investigate allegations of phone-hacking at the News of the World; Operation Pinetree, a Metropolitan Police investigation into the News of the World phone-hacking allegations covering different facts than the Operation Weeting investigation; and Operation Golding, an operation to investigate allegations of phone-hacking in Mirror Group Newspapers.

⁵⁵⁸ The CPS also considered bringing corporate charges against News Group Newspapers. However, noting the difficulties of establishing corporate liability under UK law, it stated that 'After a thorough analysis, we have decided there is insufficient evidence to provide a realistic prospect of a conviction and therefore no further action will be taken in any of these cases'. For example as reported by [The Independent of the Statement from the Crown Prosecution Service: No further action to be taken in Operations Weeting or Golding, 11 December 2015](#). See also [CPS blog article](#).

to a period of imprisonment. In sentencing Mr Coulson, the Hon. Mr Justice Saunders commented:

What is an important matter...is the amount of phone hacking that went on ... It had started by April 2002 when Milly Dowler's phone was hacked and it continued until August 2006 with the arrest of Mulcaire and Goodman. [...] Over the period there were many thousands of phone hacks and many hundreds of voicemails were accessed illegally. [...] They all knew that it was contrary to the PCC code which governs the conduct of journalists and they all knew it was morally wrong. These Defendants have said that they did not realise that it was a criminal offence. [...] It is the duty of senior journalists to know the law particularly in so far as it affects their work.⁵⁵⁹

The Leveson Inquiry and other parliamentary inquiries

16.23 While Part I of the Leveson Inquiry⁵⁶⁰ was not primarily concerned with corporate governance, it made a number of relevant findings, including:

- that 'the evidence outlined ... points to a serious failure of governance within The News of the World, News International and News Corp'.⁵⁶¹ In particular, there was a failure on the part of the management at the News of the World to take appropriate steps to investigate whether there was evidence of wrongdoing within the organisation.⁵⁶² In addition, the Leveson Inquiry found that if James Murdoch was unaware of events due to a cover up then the accountability and governance systems at News International had effectively broken down. If this was not the case, then James Murdoch failed to take appropriate action to deal with allegations of widespread criminality within the organisation;⁵⁶³
- if News Corp management were aware of the allegations, action should have been taken to investigate them. If News Corp were not aware of the

⁵⁵⁹ For further detail, see [the Hon. Mr Justice Saunder's Sentencing remarks](#).

⁵⁶⁰ At the time it was anticipated that this would be followed by Part II of the Leveson Inquiry into, among other things, the extent of unlawful or improper conduct within News International or other media organisations. In 2016 the government announced that it was to hold a consultation on whether to proceed with Part II of the Leveson Inquiry. This consultation ran from 1 November 2016 to 10 January 2017. The government is considering responses to this consultation and has not yet decided whether to proceed with Leveson Part II. However, we note that the [Conservative Party 2017 election manifesto](#) included a commitment not to proceed with Leveson Part II: 'Given the comprehensive nature of the first stage of the Leveson Inquiry and given the lengthy investigations by the police and Crown Prosecution Service into alleged wrongdoing, we will not proceed with the second stage of the Leveson Inquiry into the culture, practices and ethics of the press. We will repeal Section 40 of the Crime and Courts Act 2014, which, if enacted, would force media organisations to become members of a flawed regulatory system or risk having to pay the legal costs of both sides in libel and privacy cases, even if they win' ([Conservative Party Manifesto 2017](#), paragraph 80).

⁵⁶¹ [Leveson Report](#), Volume I, Part E, paragraph 7.49.

⁵⁶² [Leveson Report](#), Volume I, Part E, paragraph 7.49.

⁵⁶³ [Leveson Report](#), Volume I, Part E, paragraph 7.51.

allegations, then there would appear to have been a significant failure of corporate governance and in particular, in the effective identification and management of risks.⁵⁶⁴

16.24 A number of parliamentary committees have considered phone hacking and corporate governance at News Corp.⁵⁶⁵ For example, the House of Commons Select Committee on Culture, Media and Sport found:⁵⁶⁶

In failing to investigate properly, and by ignoring evidence of widespread wrongdoing, News International and its parent News Corporation exhibited wilful blindness, for which the companies' directors - including Rupert Murdoch and James Murdoch - should ultimately be prepared to take responsibility.⁵⁶⁷

16.25 In response to revelations regarding illegal voicemail interception, News Corp closed the News of the World in July 2011. That same month, it created an independently chaired Management and Standards Committee (MSC), which operated independently from News International. The MSC had a reporting line to the News Corp board via the independent chairman Lord Grabiner QC reporting to Gerson Zweifach, Senior Executive Vice President and Group General Counsel,⁵⁶⁸ and Mr Zweifach reporting to Viet Dinh, independent director and Chair of News Corp's Nominating and Corporate Governance Committee (NCGC).⁵⁶⁹

Ofcom's views on regulatory compliance of News Corp in its 2012 Fit and Proper assessment of Sky

16.26 In July 2011 Ofcom confirmed that it had a duty to consider whether Sky was fit and proper to continue to hold its broadcast licences.⁵⁷⁰ In doing so, Ofcom considered that it was 'in principle relevant' to consider the character and conduct of James and Rupert Murdoch and News Corp 'because they stand

⁵⁶⁴ [Leveson Report](#), page. 349.

⁵⁶⁵ These include for example: [the House of Commons Select Committee for Culture, Media and Sport, *Privacy and media intrusion*](#) in May 2003; the House of Commons Culture, Media and Sports Committee, [Press standards, privacy and libel](#) in February 2010; [the House of Commons Home Affairs Committee, *Unauthorised tapping into or hacking of mobile telecommunications*](#) in July 2011; the House of Commons Select Committee on Culture, Media and Sport, [News International and phone hacking](#) on 30 April 2012.

⁵⁶⁶ [House of Commons Select Committee on Culture, Media and Sport, *News International and phone hacking*](#).

⁵⁶⁷ [House of Commons Select Committee on Culture, Media and Sport, *News International and phone hacking*](#), paragraph 275.

⁵⁶⁸ Fox indicated to us at the main party hearing that Mr. Zweifach was hired in relation to the corporate governance failures at News International.

⁵⁶⁹ [News Corp Annual Report, August 2012](#).

⁵⁷⁰ See [Ofcom press release 20 September 2012](#).

in a relationship to Sky of material influence or control such that they are able to exert influence over it'.⁵⁷¹

- 16.27 In its fit and proper decision Ofcom noted Sky's announcement of 3 April 2012 that James Murdoch had stepped down as Chairman,⁵⁷² therefore lessening the extent of his influence over Sky. Ofcom also noted that during James Murdoch's tenure as Chairman and prior to that as CEO of Sky, 'Sky had continued to be a successful company'.⁵⁷³
- 16.28 Ofcom stated that on the basis of the evidence available, 'James Murdoch's conduct ... repeatedly fell short of the conduct to be expected of him as a chief executive officer and chairman'. Ofcom determined that the evidence available to date did not provide a reasonable basis to conclude that James Murdoch deliberately engaged in any wrongdoing, or for it to reach any conclusion that Rupert Murdoch or News Corp acted in a way that was inappropriate in relation to phone hacking, concealment, or corruption by employees of News Group Newspapers or News International.⁵⁷⁴
- 16.29 Overall Ofcom concluded: 'we do not consider, and having taken into account all the relevant factors, that on the evidence available to date Sky is no longer fit and proper to hold broadcast licences'.⁵⁷⁵
- 16.30 With regard to misconduct at News Corp in connection with phone hacking prior to the Leveson Inquiry in 2011, our view is that it is clear that there were serious failings in compliance with newspaper regulation and the law, as documented by the Leveson Inquiry and elsewhere. Voicemail interception and illegal payments to public officials are serious violations of the (then) Press Complaints Commission (PCC) Editors' Code of Practice⁵⁷⁶ and criminal law.
- 16.31 However, we note that the misconduct which gave rise to the phone hacking scandal, while serious, occurred some time ago. As a result, we looked at the record of News Corp in the UK after the Leveson report.

News Corp's compliance with press regulation in the UK

- 16.32 As previously explained in chapter 5, IPSO regulates all News UK titles and is responsible for regulating their compliance with the Editors' Code of Practice. We considered News UK titles' approach to editorial compliance and

⁵⁷¹ Ofcom decision on Fit and Proper assessment of Sky, 20 September 2012, paragraph 11.

⁵⁷² BSkyB announces board changes, 3 April 2012.

⁵⁷³ Ofcom decision on Fit and Proper assessment of Sky, 20 September 2012, paragraph 44.

⁵⁷⁴ Ofcom decision on fit and proper assessment of Sky, 20 September 2012, paragraphs 14, 37-40.

⁵⁷⁵ Ofcom decision on fit and proper assessment of Sky, 20 September 2012, paragraph 46.

⁵⁷⁶ The PCC was closed on 8 September 2014 and replaced by IPSO.

complaints handling procedures and their compliance record against other broadly comparable publications.

- 16.33 We found that the complaints policies of The Sun⁵⁷⁷ and The Times⁵⁷⁸ when compared with The Mirror⁵⁷⁹ and The Daily Mail⁵⁸⁰ were similarly robust. In addition, with regard to complaints to The Sun, The Sun on Sunday and The Sun website, these are resolved by a person independent of editorial staff - the Ombudsman, a role established in 2012. The Ombudsman reports to and is appointed by the Managing Editor of The Sun on a rolling annual contract as a consultant. As well as dealing with IPSO complaints, the Ombudsman deals with complaints that come directly to the newspaper through an online form. While The Times and The Sunday Times do not have an ombudsman, each paper has appointed a Senior Editor to handle complaints and advise the Editor and journalists on IPSO related matters.
- 16.34 IPSO told us it is generally satisfied with the way News UK publications process and resolve complaints. IPSO explained that although it is difficult to compare across different titles, the number, nature and seriousness of complaints regarding News UK publications are comparable to similar publications.⁵⁸¹ Our review of IPSO statistics on News UK titles' compliance record and of complaints by publisher covering 2015, 2016 and 2017⁵⁸² supports this finding. For example, upheld complaints in respect of The Sun, The Sun website and The Sun on Sunday in 2016 and 2017 were broadly similar in number and character to those received by The Daily Mail, The Mail website and The Mail on Sunday.
- 16.35 We also considered the nature and gravity of complaints against News UK titles and comparable publications in qualitative terms. For almost all publications, most complaints raised and upheld related to accuracy matters. Although some News UK titles' breaches of the Editors' Code of Practice could be characterised as significant (for example, Buckingham Palace v. The Sun),⁵⁸³ we found that the nature of breaches by News UK publications was broadly consistent with comparable publications. This was consistent with the evidence given to us by IPSO which was that there was no indication that the

⁵⁷⁷ The Sun's Complaints Policy is set out on its website and in the [News UK IPSO Annual Report 2016](#).

⁵⁷⁸ The Times and The Sunday Times Editorial Complaints Policy is set out on its website and in the [News UK IPSO Annual Report 2016](#).

⁵⁷⁹ [The Mirror's complaints policy is set out on its website](#).

⁵⁸⁰ [The Daily Mail complaints procedure is set out on its website](#).

⁵⁸¹ [Transcript of hearing with IMPRESS and IPSO](#).

⁵⁸² At the time of assessment, the data for 2017 covered January to October 2017.

⁵⁸³ This was in relation to an upheld complaint that the Sun breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined *Queen backs Brexit* published on 9 March 2016. Details available on the [IPSO website](#).

number of complaints upheld against News UK publications was in line with what would be expected for such publications.

16.36 Next we consider the compliance arrangements put in place at News Corp after 2011, mainly in response to the misconduct prior to the Leveson Inquiry in 2011 in connection with phone hacking.

Establishing a global compliance programme at News Corp

16.37 In April 2012 the News Corp board approved a group-wide global compliance programme. This included the establishment of a Compliance Steering Committee (CSC). We note statements made by Rupert Murdoch, to News Corp staff and shareholders in support of the programme⁵⁸⁴ such as in a memorandum to staff in August 2012:

... to continue to be worthy of the trust of our audiences around the world, we all have an affirmative obligation to adhere to the highest standards of ethical behaviour, consistent with our standards of business conduct. The enhancements to the compliance function that are already underway and that we are planning will help us to maintain those standards.⁵⁸⁵

16.38 Some key aspects of the global compliance programme included:

- **Greater board level oversight and new corporate governance structures:** the CSC Charter approved in February 2013 states that it is responsible for managing compliance programmes. The CSC includes key senior personnel (at least General Counsel and Chief Compliance Officer, Chief Operating Officer, Deputy Chief Financial Officer, Head of Corporate Audit, and Group Chief Compliance Officers (GCCOs))⁵⁸⁶ and reports to the Audit Committee at least quarterly, to the independent directors at least twice a year and the board at least annually.⁵⁸⁷ The Audit Committee, comprised of three or more independent directors, is responsible for overseeing the activities of the CSC as set out in its Charter⁵⁸⁸ and for ongoing monitoring and review of the compliance programme. The NCGC, among other things, is responsible for developing, reviewing and

⁵⁸⁴ For example, in News Corp's 2011 Annual Report; a statement published as an advertisement in UK national newspapers on 15 July 2011 and a statement to the UK parliamentary Committee on Culture, Media and Sport's 2012 report.

⁵⁸⁵ Full text of the Memorandum reproduced by [The Guardian: Rupert Murdoch's Memo to News Corp Staff – Full Text, 15 August 2012](#).

⁵⁸⁶ Information on these arrangements is provided by [News Corp on its website](#).

⁵⁸⁷ Information on these arrangements is provided by [News Corp on its website](#).

⁵⁸⁸ [Audit Committee Charter as of 2 August 2016](#).

recommending to the board a set of corporate governance principles including the company's Statement of Corporate Governance.⁵⁸⁹

- **implementation of compliance procedures and corporate governance structures:** in October 2012, News Corporation appointed five full time GCCOs to oversee compliance matters in specific business units with a reporting line to the board via the Group General Counsel and Chief Compliance Officer.⁵⁹⁰ Post-split, three GCCOs remained with Fox and two with News Corp. Fox has since appointed a fourth GCCO. Annual training on the Standards and corporate compliance for the board was revised and enhanced in 2012;⁵⁹¹
- **communication and guidance to staff on compliance standards via policies:** in 2013 the CSC put in place 11 new policies and protocols, largely focused on payment and anti-corruption practices. Since 2013, employees are required to read the Standards and certify annually that they have done so (this policy continued at News Corp and Fox);
- **strengthened reporting channels:** the board directed that all allegations, whether criminal or civil, that go to the integrity of the business be reported immediately to Group General Counsel or the CSC through the relevant GCCO. The CSC also receives all complaints entered into the Alertline system via an automatic email and determines responsibility for follow up, investigation and mitigation, as appropriate.

16.39 Jacques Nasser, an independent director of Fox, explained that the main compliance focus when the 2012 programme was introduced was on 'FCPA [Foreign Corrupt Practices Act] issues – the corruption issues, the fraud issues, the potential mishandling of assets', and that at that point the board did not consider there to be any major HR issues. We note that while HR issues and other non-FCPA issues were covered by the global compliance programme, the HR, Legal and Finance functions were not centralised and operated at business unit level, with limited requirements for these functions to report upward.

16.40 The evidence shows that new and wide-ranging changes to compliance arrangements were put in place at News Corp following the phone hacking scandal. Next we set out the further compliance policies, systems and

⁵⁸⁹ [NCGC Charter as of November 2016](#).

⁵⁹⁰ Information on these arrangements is provided by [News Corp on its website](#).

⁵⁹¹ [Summary of hearing with Viet Dinh, Fox independent director Viet Dinh](#).

procedures at News UK. We then assess what this more recent evidence tells us about the approach of MFT controlled companies to regulatory compliance.

Compliance enhancements at News UK

- 16.41 At News UK,⁵⁹² the role of Chief Compliance Officer (CCO) was created in September 2011 and reports to the News UK General Counsel and News Corp General Counsel and Chief Compliance Officer. The CCO's role is to ensure company-wide compliance with the law as well as with News Corp and News UK policies. The CCO is supported by a team of legal and compliance experts within News UK and has a dedicated annual ringfenced budget for staff resources and external legal fees.
- 16.42 News UK has adopted, reissued or implemented various policies since 2013 including an Engagement of Private Investigators and Search Agents Policy, and an Editorial Data Protection Policy. These are reviewed regularly and updated accordingly. News UK explained that its policies are disseminated through the company by the Compliance, HR and Technology functions. Employees are provided with copies as part of their induction pack and can access them on the intranet. Casual workers are provided with copies of the policies following registration. Contributors are required to confirm they accept News UK compliance policies, without which payment is blocked.
- 16.43 News UK provides training on a number of its policies and as relevant to the nature of its operations. For example, since 2011 over 3,000 News UK staff have received training on the Editors' Code of Practice as well as anti-bribery, conflicts of interest, workplace conduct and whistleblowing policies. As regards News Group Newspapers, 600 reporters (both employees and casual workers) received training organised by the Managing Editor and the News UK CCO. It is also a contractual term of employment for journalists to comply with the Editors' Code of Practice.

Provisional conclusion on wider regulatory compliance at MFT controlled companies – News Corporation and News Corp

- 16.44 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 compliance with newspaper regulation and the law, as documented by the Leveson Inquiry and elsewhere. We regard these as serious matters

⁵⁹² As set out earlier, News Corp's operations in the UK are largely conducted through the group of companies that has as its UK parent company News Corp UK and Ireland Ltd, and trades as News UK. News UK wholly owns five groups of companies that form the five main divisions of News UK: Times Newspapers Holdings Limited (TNHL); News Group Newspapers Limited ('NGN'); Newsprinters; Wireless Group; and Unruly Holdings Ltd.

and of concern. In our assessment, we placed some weight on this evidence in that it is related to compliance with other, non-broadcasting, legal and regulatory obligations in the UK.

16.45 However, also of relevance is the fact that the misconduct which gave rise to the phone hacking scandal, while serious, took place more than seven years ago. We have therefore also looked at the record of News UK since the Leveson Report was published. 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. We have taken into account evidence from IPSO which stated that compliance by News UK publications was in line with other comparable publications. 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.

16.46 Having considered the wider regulatory compliance of News Corporation and News Corp as MFT controlled companies and in which members of the Murdoch family hold senior positions, we now look at the compliance and corporate governance arrangements put in place at Fox following the split of News Corporation into Fox and News Corp in 2013. Having set this context, we go on to consider the main concerns raised by third parties regarding Fox, with a focus on more recent allegations at Fox News in the US.

Complaints and settlements at Fox and allegations of sexual harassment at Fox News in the US

16.47 As the second main area of concern identified by third parties, we assessed Fox's wider regulatory compliance and corporate governance procedures in the context of complaints and settlements regarding corporate governance issues at Fox and more recent allegations of sexual harassment at Fox News in the US. Before assessing the complaints and settlements themselves, we set out a summary of the wider regulatory compliance and corporate governance arrangements put in place at Fox since 2013.

Compliance enhancements at Fox

16.48 Fox submitted that:

Fox has implemented substantial measures since 2012 to overhaul corporate governance across its entire organisation.

These should leave no doubt that regulatory compliance is a matter of the highest importance for Fox.⁵⁹³

Fox is committed to complying with the law and the highest standards of corporate governance, and to providing an inclusive workplace that treats every employee with respect.⁵⁹⁴

16.49 Fox submitted that the wider regulatory compliance enhancements it has made since 2012 included:

- a successor CSC which reports directly to the Fox board through the Audit Committee.⁵⁹⁵ As of June 2017 the CSC also includes the Chief Human Resources Officer and Deputy Chief Compliance Officer;
- as of May 2014, further to the News Corporation board instruction of 2012 (see paragraph 16.37), monthly written reports on all significant litigation or claims are to be sent to Deputy General Counsel;
- new policies in 2015 such as The Global Sanctions, Anti-Boycott and Import/Export Policy, and revisions to the Standards in 2016 to include information on Anti-Trust, Sanctions and Protection of Information, as well as being generally reviewed by the CSC;
- mandatory compliance training for all new and current employees across all majority owned Fox businesses. Since August 2016 the HR training programme has been reviewed to include live video training and a presentation by James and Lachlan Murdoch emphasising the importance of maintaining a civil and respectful workplace and the non-retaliatory reporting process and channels;
- as of March 2017, creation of a Chief HR Officer role 'as part of Fox's broader focus on the people part of its business'.⁵⁹⁶ In this new role, Mr Gaissmaier led the development and roll out of a confidential employee survey across all Fox staff. The email invitation sent to employees in October 2017 was signed by James and Lachlan Murdoch. Fox intends the survey to be an annual process.

⁵⁹³ Fox, initial submission on broadcasting standards.

⁵⁹⁴ Fox, initial submission on broadcasting standards.

⁵⁹⁵ Information on these arrangements is provided by News Corp on its website.

⁵⁹⁶ As reported publicly, for example on Business Wire.

Complaints and out of court settlements at Fox

16.50 We considered evidence on all complaints made to and tracked by Fox’s Corporate Audit, Compliance and Legal functions between 27 September 2012 and 27 September 2017 relating to corporate governance issues. These include financial irregularities, sexual harassment, sexual and racial discrimination. These exclude complaints at Fox’s business units that were not escalated further centrally. In addition, we considered details of out of court settlements which Fox as a company has made with employees between 1 January 2010 and 8 November 2017 in relation to sexual harassment and/or racial discrimination claims.⁵⁹⁷

Complaints

16.51 We received evidence that a total of [redacted] complaints were made between 27 September 2012 and 27 September 2017 relating to ‘corporate governance issues’ as defined in paragraph 16.50. Of these, [redacted] related to sexual harassment and [redacted] to racial discrimination. All [redacted] of these complaints [redacted] were raised at Fox News, largely between July 2016 and August 2017 ([redacted]). The remainder of the complaints related to other corporate governance issues such as financial irregularities.

16.52 Table 16.1 sets out a breakdown of complaints by Fox entity. The highest proportion of complaints were at [redacted], followed closely by [redacted], then [redacted], [redacted] and then [redacted] and [redacted]⁵⁹⁸ which each accounted for the same proportion of complaints.

Table 16.1: Breakdown of complaints by Fox entity

	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Number of complaints	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% of total complaints	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: CMA analysis of Fox data.

* The [redacted] complaints for [redacted] include both domestic (which had [redacted] complaints) and international (which had [redacted] complaints).

† The [redacted] complaints were made in the [redacted].

16.53 As shown in Table 16.2, most complaints were made in the [redacted], followed by [redacted] (which had less than half as many as [redacted]), [redacted], followed by [redacted]. The [redacted] Fox entities accounted for the lowest proportion of complaints.

⁵⁹⁷ For [redacted], information was provided from 1 January 2013 onwards.

⁵⁹⁸ [redacted].

Table 16.2: Breakdown of complaints to Fox by jurisdiction

	Latin America	Asia Pacific	Europe, Middle East and Africa (exc. UK)	UK	US	India
Number of complaints	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of total complaints	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Fox data.

16.54 We also considered Fox’s procedures for responding to a selection of these complaints. One of the examples where we considered a complaint was handled in a timely manner related to alleged racially discriminatory remarks and hiring practices by a [REDACTED] of a business unit. The complaint was raised in [REDACTED]. Within a month it was investigated, a decision made and the subject of the complaint informed that they ‘must depart the company, effective end of [REDACTED]’. Following concerns raised about the handling of the matter by [REDACTED] employees, it was escalated upward to the relevant GCCO. The GCCO opened a second investigation that same day, which concluded seven days later. The initial investigation, though later found to be insufficient by Fox, was consistent with Fox’s compliance policies at that time and further action was taken following the second investigation. We note Fox’s timely response and the fact that existing compliance and corporate governance policies, systems and procedures were in place to enable it.

Out of court settlements

16.55 We also considered out of court settlements made by Fox in response to some of the complaints made, covering 1 January 2010 to 8 November 2017. A number of third parties put to us the importance of reviewing this. Ed Miliband et al submitted that settlements made by former employee Bill O’Reilly were ‘a deeply concerning pattern’ and that the Fox board’s submission that it was unaware of the details of all of these is ‘wholly inadequate’.⁵⁹⁹ We held a hearing with Wigdor LLP, a US-based employment law firm representing a number of individuals in their claims against Fox for sexual harassment and racial discrimination. Douglas Wigdor stated in reference to settlements made by Mr O’Reilly that ‘In turning a complete blind eye towards the conduct of its employees ... it is truly a complete failure of regulatory compliance in corporate governance.’⁶⁰⁰

16.56 The analysis presented here does not include personal settlements made by Fox employees. Fox submitted that it made [REDACTED] out of court settlements relating to sexual harassment and/or racial discrimination with employees

⁵⁹⁹ [Ed Miliband et al submission to the issues statement](#), page 87 and 88.

⁶⁰⁰ [Transcript of hearing with Wigdor LLP](#), page 9 lines 10 to 12.

between 1 January 2010 and 8 November 2017. The amount of one of these settlements is yet to be confirmed. In the [REDACTED] remaining settlements, Fox paid out in excess of [REDACTED].

16.57 [REDACTED] accounted for the highest proportion of settlements, followed by [REDACTED] which each accounted for the same proportion of settlements. [REDACTED] accounted for the lowest proportion of settlements relating to sexual harassment and/or racial discrimination with employees between 1 January 2010 and 8 November 2017.

16.58 [REDACTED] accounted for the highest proportion of settlements by value, followed by [REDACTED]. [REDACTED] each accounted for the same proportion of settlements by value.

16.59 During the main party hearing Fox made reference to the litigious culture in the US and the associated costs and risks this could bring for a company. Fox explained that this was why it had chosen settlements over legal action in response to some complaints:

regrettably, at least in the United States, it is a fact of life and here is what happens...somebody brings a case against you, brings a case against someone in your company, makes extraordinary allegations against them, and you can spend - you know, pick a number - several million dollars for the thrill of winning, and you are not getting that back...I am not saying that everybody who came forwards was an opportunist. Far from it.

Allegations of sexual harassment at Fox News in the US

16.60 As reported, in 2016 and 2017 there was a spate of allegations of sexual harassment at Fox News in the US. These were made against senior staff such as Roger Ailes, Fox News CEO at the time and high-profile Fox News presenter, Bill O'Reilly, former presenter of 'The O'Reilly Factor'.⁶⁰¹ We note that the number and value of settlements paid by Fox has increased since May 2016. We understand this to be in relation to allegations at Fox News.

Allegations against Roger Ailes – a timeline

16.61 We note that from July 2015 to July 2016, Mr Ailes, then CEO of Fox News, 'reported directly to Rupert Murdoch on a day to day basis, as well as formally

⁶⁰¹ Other employees named in individual complaints included Charles Payne, contributor to the Fox News channel and host of Fox's Making Money with Charles Payne and Eric Bolling, a political commentator who appeared on Fox News' opinion shows such as Hannity and Fox and Friends. For example as reported by [The New York Times](#).

reporting to James and Lachlan Murdoch.’ Prior to July 2015, Mr Ailes reported to Rupert Murdoch and Chase Carey (now Vice Chair of Fox).

16.62 We set out a timeline regarding the allegations made against Mr Ailes in 2016:

6 July 2016:

- Ms Gretchen Carlson filed a public lawsuit against Mr Ailes, claiming that Mr Ailes had made harassing statements in circa 2009, 2013 and September 2015. Ms Carlson also claimed that she was subject to retaliatory behaviour in 2009 and retaliatory demotion/transfer in 2013;
- James Murdoch, CEO of Fox and Lachlan Murdoch, Executive Chairman of Fox, directed Fox to start an internal review;

7 and 8 July 2016:

- Mr Zweifach, General Counsel of Fox directed General Counsel of Fox News, Ms Dianne Brandi, to assemble a list of female on-air talent who had contact with Mr Ailes and to schedule interviews with these individuals. Mr Zweifach instructed external counsel to assist in the internal investigation. Some members of the Fox board were informed;

11 to 18 July 2016:

- external counsel conducted interviews with multiple Fox News employees;
- with the authority of James, Rupert and Lachlan Murdoch, Mr Zweifach notified Mr Ailes’ counsel that external counsel had substantiated several claims of harassment and advised that Mr Ailes must leave the company;

20 July 2016:

- Mr Zweifach notified Mr Ailes’ counsel that Mr Ailes must sign a separation agreement or be fired for cause. Mr Ailes received a \$40 million severance payment due under his contract;⁶⁰²

21 July 2016:

- Rupert Murdoch informed Fox News’ newsroom that Mr Ailes had left the company;
- Fox board briefed by email (and in person at the August 2016 board meeting);

⁶⁰² See [Reuters article](#).

July 2016 to November 2017:

- further allegations against employees at Fox News come to light;⁶⁰³

August 2016 to May 2017:

- Fox makes changes to senior management positions at Fox News to effect change in the business including the role of Chief Financial Officer (resignation, August 2016) and Chief Operating Officer (left by mutual agreement in May 2017).

Allegations against Mr O'Reilly – a timeline

16.63 We set out a timeline of the allegations against Mr O'Reilly. Here we do consider personal settlements to the extent that they relate to these allegations.

2002:

- personal settlement with Rachel Witlieb Bernstein for verbal abuse allegations;⁶⁰⁴

2004:

- personal settlement following a lawsuit from Andrea Mackris for sexual harassment allegations;^{605,606}

2011:

- personal settlement with Rebecca Gomez Diamond for sexual harassment allegations.^{607,608}

August 2016:

⁶⁰³ Fox submitted to us that this was largely as a result of its 'proactive efforts to investigate' issues at Fox News, including inviting employees to interview as part of its internal investigation process.

⁶⁰⁴ For example as reported by [The New York Times](#).

⁶⁰⁵ This settlement was reportedly for \$9 million, for example as reported by [The New York Times](#).

⁶⁰⁶ Fox submitted details of this settlement, namely that Ms Mackris sent a letter to senior management at (then) News Corp describing the nature of her allegations on 29 September 2004. Following a discussion between company lawyers and Ms Mackris, News Corp filed a suit against Ms Mackris on 12 October 2004 for attempted extortion. In response, Ms Mackris served the company and Mr O'Reilly with a harassment complaint the following day. On 28 October 2004, Mr O'Reilly settled with Ms Mackris, which he funded himself. The company did not agree to pay any amount. Separately, we note that the lawsuit was publicly reported on at the time - for example, as reported by CBS News. In the main party hearing, Fox stated that its board was not made aware of the settlements made by Mr O'Reilly in 2002 and 2004.

⁶⁰⁷ For example as reported by [The New York Times](#). Fox submitted that prior to Autumn 2016 its senior management was unaware of the fact or the amount of this settlement.

⁶⁰⁸ In December 2017 Ms. Witlieb Bernstein, Ms. Mackris and Ms. Gomez Diamond filed a defamation lawsuit against Mr O'Reilly regarding claims that they did not use internal reporting channels at Fox News at the time of raising their complaints. For example as reported by [Variety](#).

- allegations of sexual harassment made by former employees of Fox News – Laurie Dhue and Juliet Huddy – and settled by Fox;⁶⁰⁹

January 2017:

- Lis Wiehl raised a complaint of sexual harassment. Within 72 hours of the complaint being made, Fox's counsel was advised that Ms Wiehl and Mr O'Reilly and their legal counsel had mediated the dispute, that they were committed to putting the matter behind them, and that they had agreed that all copies of Ms Wiehl's allegations should be returned to her attorney. Fox submitted that there was no legal basis on which to terminate Mr O'Reilly's contract at that time, as it was based on a disputed claim that Ms Wiehl had later withdrawn. Fox considered the matter to be personally settled by Mr O'Reilly and submitted that it was not aware of the details of the settlement amount;

February 2017:

- Fox News offers a new contract to Mr O'Reilly which is agreed and signed;

April 2017:

- allegations of sexual harassment made by Wendy Walsh reported by The New York Times. Ms Walsh also filed an Alertline complaint on 5 April 2017;
- Fox appointed external counsel to investigate Ms Walsh's complaints and found that Mr O'Reilly had engaged in inappropriate conduct in 2013;
- Fox terminated Mr O'Reilly's employment on 19 April 2017, with a reported severance payment in excess of \$20 million.

September 2017:

- Mr O'Reilly makes an appearance on The Hannity Show on Fox News. This was not discussed with the board, Fox senior management or Fox News.

21 October 2017:

- The New York Times reports that the settlement with Ms Wiehl was worth approximately \$32 million.⁶¹⁰

⁶⁰⁹ For example as reported by [The New York Times](#).

⁶¹⁰ [The New York Times](#).

16.64 Jacques Nasser told us that when the Fox board was informed of the harassment allegations against Mr O'Reilly, it was advised that the situation was different to the allegations involving Mr Ailes. This was in part related to there being an employment agreement with Mr O'Reilly which stated that he could not be dismissed on the basis of an allegation unless that allegation was proved in court. Further, at the time of the allegations being raised, the evidence was uncertain.⁶¹¹

16.65 In response to this, Mr Wigdor submitted that:

it is important to know that in the United States there is no such thing as a contract that would preclude an employer from terminating its employee. In other words, you can have a contract that has a provision in it that states that to fire somebody for cause you would have to prove something in court, but that does not preclude the employer from terminating the employee without cause and then providing that employee either with severance, as it would be determined in the contract, or paying out the remainder of the contract ... Fox would have been well within its rights to terminate Mr O'Reilly without cause and then pay him.⁶¹²

16.66 We requested evidence regarding Mr O'Reilly's contract terms. Fox submitted that the 2017 contract terms agreed by Fox with Mr O'Reilly, differed from his 2012 contract with Fox News which itself was based on legacy contracts, agreed by Fox News, rather than by Fox.⁶¹³ Fox said that it had offered a new contract to Mr O'Reilly in February 2017 as 'it substantially lowered the bar to his termination if more facts emerged that made clear that Mr O'Reilly had engaged in inappropriate behaviour'.

16.67 In the main party hearing, Fox acknowledged that 'the really large numbers [in terms of settlement amounts] are from cases that did have merit' in relation to recent settlements made for Fox News. Group General Counsel and Chief Compliance Officer Mr Zweifach went on to explain:

I met lots of women, spoke to lots of women, who were victimised, who deserved to be compensated, and we did. And that was the right thing to do. I am talking about, you know, they are relatively small change in the scheme of things for cases without merit. I am not going to pay the kind of money you are

⁶¹¹ [Summary of hearing with Jacques Nasser, independent director of Fox.](#)

⁶¹² [Transcript of hearing with Wigdor LLP](#), page 6 lines 23 to 25, page 7 lines 1 to 7.

⁶¹³ Agreement between Household Inc (representative of Bill O'Reilly) and Fox News Network LLC.

looking at for cases that had no merit. We paid money to people who were truly victimised.

16.68 We now review how Fox dealt with the serious allegations relating to sexual harassment at Fox News. In the context of these allegations, and other complaints and settlements at Fox, we go on to consider the efficacy of Fox's previous and existing policies, systems and procedures and the timeliness and effectiveness of Fox's responses, before considering the relevance of this evidence for our assessment.

Changes to wider regulatory compliance and corporate governance at Fox in response to allegations at Fox News

16.69 We acknowledge Fox's response to the allegations of sexual harassment at Fox News in the US outlined earlier – such as the removal of Mr Ailes, Mr O'Reilly and accompanying senior management personnel and the appointment of external counsel to undertake internal investigations into the allegations, both known and unknown. Fox's Group General Counsel and Chief Compliance Officer set out its view of compliance and corporate governance in the main party hearing, stating:

you are reactive, you are inevitably reactive, but we try to be proactive and look more broadly at the entire scale of issues that are raised and strengthen the compliance. But I will be honest with you. It is never over. You are never done ... You have to be reactive. So it is true that we react, but we do not react in a narrow way; we react in a broad way to address the issues to reflect, I think, a robust response.

16.70 Fox made clear that certain types of behaviour including sexual misconduct have no place at Fox and that it would continue to work to enhance its culture and provide a safe, productive and inclusive workspace for everyone. Fox stated that it had taken action to investigate the allegations of sexual harassment seriously and to hold the perpetrators accountable at the highest levels of the business and had, it hoped, set a high bar for any institution grappling with similar wrongdoing.⁶¹⁴

16.71 In 2017 Fox instigated and implemented further changes to its compliance programme and corporate governance procedures. We understand these changes to be both in response to the recent allegations of sexual

⁶¹⁴ [Summary of hearing with Fox.](#)

harassment at Fox News and an attempt to prevent such misconduct arising in future.

16.72 On 13 July 2017, Group Counsel and Chief Compliance Officer Mr Zweifach mandated the following additional reporting processes in a communication sent to staff:

- all claims or accusations of sexual harassment or discrimination, or other forms of illegal discrimination or retaliation, should be reported up immediately through the HR teams to Jill Ratner, Deputy General Counsel of Fox. Legal will then work with HR to ensure that they both have an opportunity to consider how to respond and can keep the Fox board apprised of those claims that require their attention;
- no claim of sexual harassment or other forms of discrimination should be settled without giving Ms Ratner or Mr Zweifach notice of the claim and the proposed settlement, to ensure they are in a position to brief the board and senior management about the settlements that merit their attention;
- the monthly written reports to Deputy General Counsel should include any such claims or accusations referred to previously.

16.73 Additional dotted reporting lines in relation to Fox News' HR, Legal and Finance functions were introduced, following the hiring of a Chief HR Officer and expansion of the HR team. Jacques Nasser told us that the Fox board's rationale for doing so was to ensure that the issues which had arisen at Fox News in 2016 and 2017 were not just isolated issues. It was felt that these changes would enable senior management and the board to pick up on potential issues earlier. Jacques Nasser also acknowledged that not making these changes as part of the global compliance programme enhancements in 2012 was an oversight at the time. We note that Fox submitted that the enhancements to the compliance programme in 2012 and 2013 included measures to increase the visibility of division-level HR issues to Fox centrally, as well as including HR related compliance, training and reporting requirements (see paragraph 16.38).

16.74 We note that the board authorised the formation of a special committee in relation to workplace issues at Fox News in April 2017. On 20 November 2017, Fox publicly announced the establishment of the Fox News Workplace Professionalism and Inclusion Council (the Council). Fox explained that the Council arose from its own initiative and is also part of an agreed shareholder settlement 'reflecting Fox and Fox News' affirmative commitment to a business practice and corporate value of zero tolerance for sexual harassment, race discrimination and all other forms of discrimination

prohibited by law, and a corporate policy that creates a safe, productive and welcoming workplace for all employees'. The shareholder settlement also included a payment of \$90 million. The Council will comprise experts in workplace and inclusion matters, and 'will advise Fox News and its senior management in its ongoing efforts to ensure a proper workplace environment for all employees and guests, strengthen reporting practices for wrongdoing, enhance HR training on workplace behavior, and further recruitment and advancement of women and minorities'.⁶¹⁵

Provisional conclusion on allegations of sexual harassment at Fox News in the US

16.75 With regard to the allegations against Fox News employees in the US, we acknowledge that Fox moved quickly in dealing with the specific allegations against Mr Ailes once the Fox board was aware of these. The evidence suggests that there were factors relating to Mr 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.

Provisional conclusion on wider regulatory compliance and corporate governance

16.76 As set out in chapter 13, 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.

16.77 As outlined previously, 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

⁶¹⁵ As reported by [Fox](#).

the greatest weight in our assessment. Nevertheless, we note 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.

- 16.78 We have looked at News Corp’s approach to 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 relevance of this evidence for our assessment of the broadcasting standards consideration.
- 16.79 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 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.
- 16.80 As a result, we 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.
- 16.81 With regard to the allegations against Fox News employees in the US, we acknowledge that Fox moved quickly in dealing with the specific allegations against Mr Ailes once the Fox board was aware of these. The evidence suggests that there were factors relating to Mr 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.

- 16.82 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, whether in the UK or elsewhere. We therefore attach greater weight to the evidence relating to Fox's commitment to those standards (set out in chapter 14) in our assessment of the broadcasting standards consideration.
- 16.83 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 inadequacies 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.
- 16.84 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.
- 16.85 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.

17. Provisional finding on the broadcasting standards consideration

- 17.1 Assessing all of the evidence in the round, we consider that Fox, Sky and the MFT (taking into account the media enterprises that the MFT controls, including News Corp) have a genuine commitment to the attainment of the broadcasting standards objectives.
- 17.2 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.