Letter from
Corporate Governance experts

To
Secretary of State
Ms. Karen Bradley
Department of Digital, Culture, Media and Sport
100 Parliament Street
Westminster
London SW1A 2BQ

14 July 2017

21st Century Fox and Sky Plc - major corporate governance concerns

Dear Ms. Bradley,

We write as experts in corporate governance, to aid your deliberations about 21st Century Fox's ("21C Fox") bid for the remaining shares in Sky Plc ("Sky"). Many of Ofcom's findings about corporate governance at Murdoch-owned companies are welcome, but Ofcom was not able to go into sufficient depth in several areas.

Ofcom concluded that "It seems clear that things went seriously wrong at Fox News. This was a grave failure of corporate governance". Yet it accepted several claims by Fox, including one that "no executive director was aware of any allegations of sexual and racial harassment at Fox News prior to July 2016." As there is a *"high threshold"*[1] to finding a broadcaster *"unfit and improper"* Ofcom therefore did not withdraw the Murdochs' broadcast license in the UK. However, the *"threshold for a reference"* to the Competition and Markets Authority *"is low,"*[2] and we urge you to refer the bid for Sky to that body for a full phase 2 review.

We know that you are fully aware of the UK phone hacking scandal which derailed the Murdochs' last bid for full control of Sky in 2011 as well as the unfolding sexual harassment

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[1] 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, https://www.ofcom.org.uk/__data/assets/pdf_file/0013/103621/decision-fit-proper.pdf, accessed 14 July 2017.

[2] *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox, Inc*, Ofcom's report to the Secretary of State, https://www.ofcom.org.uk/__data/assets/pdf_file/0012/103620/public-interest-test-report.pdf, accessed 14 July 2017.

scandal in which 21C Fox is embroiled in the United States. These failings occur at 21C Fox largely because the interests of the company are all subordinated to the wishes of one family.

At 21C Fox, this is a result of the dual class share structure in which the majority of shareholders own only non-voting Class A shares while a minority, including the Murdochs, own voting Class B shares. Together, the Murdoch Family Trust and Rupert Murdoch own approximately 39% of the voting shares in 21C Fox (as of the 'new' News Corporation). This means that they can exercise effective control of the companies while incurring the expense of owning only approximately 12% of the total stock. This structure is lawful, but it separates a company's economic interests from its voting interests and risks creating a culture in which directors and executives are not accountable to the majority of shareholders.

Directors and executives should expect to be fired or step down for failure as the likes of, for example, Tony Hayward at B.P. and Bob Diamond at Barclays or Travis Kalanick at Uber, eventually did. In companies controlled by Rupert Murdoch by contrast, directors and executives are only fired for failure to please the boss or as a very last resort to protect the family's interests.

For example, allegations that Fox News' lead anchor, Bill O'Reilly, engaged in improper sexual behavior in the workplace date back at least to 2004, when he was sued by his producer, Andrea Mackris, for sexual harassment. 21C Fox renewed Mr. O'Reilly's contract in late February 2017, even though it was by then aware of several additional settlements with women who had complained about sexual harassment. We understand that Fox News and Bill O'Reilly together paid a total of $13m in settlements to complainants over the last 13 years in a bid to keep the story out of the news.

Ofcom asked two questions about corporate governance failures.

- *First, did the management of Fox know about the misconduct and fail to act?*
- *Second, if they did not know, can the public have confidence that any future corporate governance failings, which might touch on broadcasting, would be dealt with effectively?"*

Fox has testified to Ofcom that senior executives were first ignorant and then acted to introduce new compliance mechanisms, and other measures to clean house. But phone hacking allegations were batted off with the 'rogue reporter' defence for many years, and there are several similarities to how the company has responded to sexual harassment to date.

Ofcom has rightly concluded that *“there is a risk that the transaction may increase the political influence of members of the Murdoch Family Trust.”* This is a very real risk given the Murdochs’ track record and the company structure which makes it hard for shareholders or board members to provide the necessary checks and balance. A full analysis by the Competition and Markets Authority of both plurality and broadcasting standards issues, running concurrently with other probes such as the investigation into secret payments to harassment victims by the US Attorney’s Office in New York are the only way to ensure that the systemic nature of the failings at Murdoch-owned companies is fully visible to you at the time you make your final decision on the bid.

Yours,

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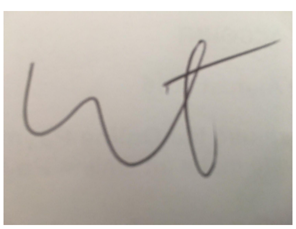

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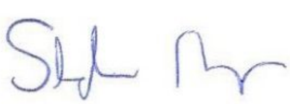

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