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March 8, 2017

[redacted]
Deputy Director, Head of Media Policy
Department for Culture, Media and Sport
100 Parliament Street
London SW1A 2BQ

Dear [redacted]

Twenty-First Century Fox, Inc. and Sky plc
European Intervention Notice

I write in response to your letter dated 3 March 2017, in which you indicate that the Secretary of State for Culture, Media and Sport (the **Secretary of State**) is "minded to" issue a European Intervention Notice under section 67 of the Enterprise Act 2002 (**EA 2002**) in respect of the proposed acquisition by Twenty First Century Fox, Inc. (**21CF**) of the entire issued and to be issued share capital of Sky plc (**Sky**) that it does not already own (the **Transaction**) on the basis of two identified public interest considerations (**PICs**): the plurality ground (under section 58(2C)(a) of the EA 2002) and the commitment to broadcasting standards ground (under section 58(2C)(c) of the EA 2002).

The Secretary of State's decision

21CF has recognised from the outset[1] that the Secretary of State may wish to seek advice from the CMA and Ofcom on PICs potentially relevant to the Transaction, so that any decision on whether these PICs require further consideration is made on a fully-informed basis, taking into account further factual information and technical matters.

21CF is confident that an objective analysis of all relevant information will demonstrate that the Transaction raises no concerns with regard to either of the PICs identified by the Secretary of State. We welcome a thorough and thoughtful review because we are confident that the Transaction is in the public interest and will stand all tests.

Should the Secretary of State confirm her decision, 21CF will engage fully with the CMA and Ofcom as they prepare their reports, to provide additional evidence on the range of issues and technical matters to which your letter refers.

[1] See paragraphs 1.9 and 5.1 of the Allen & Overy briefing of 20 December 2016 (**Allen & Overy Preliminary Briefing**) which is attached to this letter for convenience.

As you are aware, 21CF has offered to make further representations on the Transaction since submitting its preliminary briefing to the Secretary of State over two months ago. This would have allowed 21CF to respond to the approximately 50 written submissions to which your letter refers and to which we have not had access and, in particular, address in detail the serious flaws in the Media Reform Coalition / Avaaz report on which the Secretary of State appears to rely in reaching her current provisional view (page 2, paragraph 6 of your letter). These flaws include the misattribution of consumption of news on commercial radio to Sky (which Ofcom has recognised is not the correct approach), the erroneous characterisation of News Corp as the "largest newspaper provider" (this is in fact DMGT, in terms of both circulation and share of references), inaccurate claims that rising online readership has "eclipsed" the dramatic decline in circulation of News Corp titles (in fact, based on analysis of Ofcom's 2016 news consumption data, News Corp has fallen from being the second-largest news provider in terms of cross-media share of references in 2010, to the seventh-largest in 2016) and, in a clear error, entirely ignoring the implications of the split between 21CF and News Corporation.

At this time, 21CF would note a number of specific points that are of particular relevance to the two PICs identified by the Secretary of State: media plurality and broadcasting standards.

Media plurality

First, the separation of 21CF from News Corporation is a significant consideration and a material change from analysis carried out by Ofcom when News Corporation sought to acquire the remaining shares in BSkyB (as it then was) in 2010. 21CF looks forward to explaining in more detail how it has operated since the split and how this bears on the considerations identified by the Secretary of State.

Your letter notes that the "*[Murdoch Family Trust (**MFT**)] currently has a c.15% shareholding in Sky*" and that "*[the MFT] will increase its shareholding from c.15% to c.39%*". That is not correct: the MFT has no shareholding in Sky. As we noted in the Allen & Overy Preliminary Briefing, the MFT (in conjunction with other small interests associated with K. Rupert Murdoch) holds approximately 38.9% of 21CF's Class B Common Stock (i.e. voting shares), together with less than 1% of 21CF's Class A Common Stock. 21CF in turn currently holds approximately 39.14% of the issued share capital of Sky. This means that the MFT and other interests associated with the Murdoch family hold only an indirect interest in Sky, not a shareholding. This distinction is important because the MFT's relationship with Sky will continue to be through a listed company – 21CF – with other shareholders and its own board comprising a majority of independent directors under applicable US corporate governance rules (currently eight out of 13 directors) (see paragraph 2.10 of the Allen & Overy Preliminary Briefing).

We note that News Corporation is not party to the Transaction and that the shareholdings of the MFT in News Corporation and 21CF will remain unchanged following the Transaction. The legal relevance of this distinction is that it is clear from the judgment of the Court of Appeal in *Sky/ITV* that "*when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another*" (see paragraph 4.12 of the Allen & Overy Preliminary Briefing). Therefore the relevance of the split cannot be dismissed on the basis of the degree of cross-ownership between the two companies, and to do so would be to assess the impact of the Transaction on the relevant PIC in a way that runs contrary to the appropriate legal test.

Accordingly, we do not accept that the Transaction "brings" under the control of the MFT "several" of the leading providers of news in the UK.[2]

Second, 21CF remains confident that the facts will show that the UK media is robustly plural and that plurality has increased in recent years. 21CF intends to provide further evidence of this in due course, taking into account the most recent available data.

The robust plurality of the media is particularly relevant because the correct legal test is whether the Transaction would result in *insufficient* plurality, not a reduction in plurality. While 21CF accepts that the analysis would need to assess the current level of plurality, an adverse effect on the public interest cannot in any event be identified simply by pointing to a change in plurality relative to current levels. In that respect an analysis of the position in 2007 and 2010 would be relevant.

Third, the Secretary of State and, if she seeks its advice, Ofcom, should engage fully with the transformation of news provision and consumption brought about by the internet and social media. Given the pace of these developments, it is clearly not appropriate to dismiss them by referring to a report prepared by Ofcom more than six years ago.[3] The impact of these changes is quite clear now, and whether or not "caution" was warranted in considering their impact then is irrelevant. We note that Ofcom's 2015 measurement framework recognises that online news sources and the role of social media and search engines in shaping news consumption must be taken into account.[4]

Broadcasting standards

As regards the "commitment to broadcasting standards ground", as an existing broadcast licence holder, 21CF is wholly committed to the broadcasting standards in each jurisdiction in which it operates, including to the objectives set out in the Communications Act 2003 in relation to its UK broadcasting licences. 21CF takes compliance with these rules very seriously and, like Sky, has never been sanctioned (unlike a number of other major broadcasters). Moreover, as you note in your letter, while assessing commitment to these objectives may involve consideration of past compliance, this should be a *qualitative* assessment, rather than a simplistic count of past infringements. Your letter, however, then appears to suggest that a purely numerical comparative assessment between Sky and 21CF entities (weighted by number of services) suffices to indicate a potential risk of deterioration of "Sky's compliance record". This is clearly not the case: such comparative analysis between 21CF and Sky is at best irrelevant and uninformative in the context of the identified PIC.

More generally, with regard to the compliance issues relating to the newspaper business carried out by News UK (including the now defunct NoTW), 21CF takes compliance matters extremely seriously and is proud of the transformation of its corporate governance and of the arrangements it has put in place since that time. In fact, the level of scrutiny and controls we have imposed around the world were informed by the lessons learned in 2011.

In addition to the majority of independent directors on 21CF's Board and the two committees of the 21CF Board with responsibility for corporate governance matters (the Audit Committee and

[2] Page 7, paragraph 4 of your letter.
[3] Page 5, paragraph 3 of your letter.
[4] Ofcom, *Measurement framework for media plurality*, 5 November 2015; see e.g. paragraphs 1.18 and 3.34.

the Nominating and Corporate Governance Committee, both of which are composed exclusively of independent directors), 21CF has adopted strong governance measures and controls to ensure it meets the highest standards of corporate conduct. In April 2012, the company established an enhanced global compliance programme, including a global compliance steering committee under the leadership of the general counsel and chief compliance officer. Amongst other things, these arrangements provide for the rapid escalation of material issues from individual businesses through the compliance steering committee to the independent directors of the Audit Committee and the full Board.[5] 21CF is confident any analysis Ofcom may be requested to undertake will confirm this.

Next Steps

21CF is confident that the Transaction will be approved based on an objective assessment of the facts. Should the Secretary of State intervene, 21CF trusts that it will be permitted to make representations with adequate time and on the basis of appropriate notice of any issues raised and the underlying evidence.

21CF would welcome it if the Secretary of State could take her decision as to intervention as soon as possible, regardless of the outcome of that decision. If the Secretary of State requires advice from Ofcom and the CMA, 21CF is prepared to begin working with them as soon as possible.

Conclusion

21CF welcomes a thorough and thoughtful regulatory review. We believe this transaction is in the interest of the UK, its creative economy and its consumers. For the past 30 years, 21CF and Sky have been broadcasters of good standing in the UK, a responsibility we take seriously. The UK has a thriving creative and media sector that is becoming increasingly more plural and we are confident that this transaction would not result in there being insufficient plurality in the UK. We will continue to work with all relevant regulatory authorities in assisting their reviews.

Yours sincerely,

[redacted]

Jeffrey Palker
Executive Vice President, Deputy General Counsel and Deputy Chief Compliance Officer
Twenty First Century Fox, Inc.

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5 See paragraphs 2.10 and 2.11 of the Allen & Overy Preliminary Briefing.