

BY EMAIL

13 September 2017

██████████
Deputy Director for Media
Department for Culture, Media and Sport
4th Floor, 100 Parliament Street
London SW1A 2BQ

Dear Mr ██████████,

**Twenty-First Century Fox, Inc. (“21CF”) and Sky plc (“Sky”)
‘Minded-to’ decision regarding broadcasting standards ground**

I write in response to the letter from DCMS dated 12 September 2017 indicating that the Secretary of State is now minded to refer 21CF’s proposed acquisition of the remaining shares in Sky (the “**Transaction**”) to the Competition and Markets Authority (“**CMA**”) on the broadcasting standards ground (the “**Minded-to Decision**”).

We disagree with the Secretary of State’s Minded-to Decision, but given the delay that has already accrued, 21CF’s priority is now that the CMA’s review process can commence promptly. Accordingly, 21CF does not intend to make representations regarding the Minded-to Decision, does not request a response to this letter, does not object to (and indeed urges) a final reference decision made in the absence of any further representations.

It is now nearly six months since the Secretary of State commenced the formal review process on 3 March 2017 and on any view this is a truly exceptional period for a first-phase review (not least given the 24-week period allowed for a *second-phase* review by the CMA). This exceptional delay – even prior to a second-phase review – is creating a situation of substantial and unacceptable uncertainty for 21CF and its shareholders (including the sizeable majority of independent shareholders in the company). We understand that Sky, whose independent directors have recommended 21CF’s offer to its shareholders, shares these concerns.

The Secretary of State’s decision runs contrary to the consistent advice of the independent and expert broadcast regulator, Ofcom, that there are not broadcasting standards concerns that may justify a reference on this basis. This is a position Ofcom has now stated clearly on three separate occasions: in its report dated 20 June (which followed three months of detailed investigation),¹ again on 25 August in response to the Secretary of State’s request for further

¹ Page 5: “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”.

advice,² and yet again on 4 September in response to the Secretary of State's request for further clarification.³

In her statement to Parliament on 29 June, announcing that she was not minded to refer the transaction to the CMA on the basis of the broadcasting standards ground, the Secretary of State acknowledged that Ofcom's advice was "unequivocal". Nothing of substance has changed in Ofcom's advice since then: it was, and remains, that a reference on the broadcasting standards ground is not justified. Nor has any new relevant evidence been provided. The matters on which the Minded-to Decision purports to be based – the former inadequacy of Broadcasting Code compliance arrangements at Fox News, and wider corporate governance matters – were considered comprehensively in Ofcom's investigation and original advice. As to the "apparent new evidence" that the Secretary of State subsequently asked Ofcom to consider, Ofcom's advice is that this either does not warrant investigation under the Broadcasting Code or is not relevant to the broadcasting standards public interest consideration.⁴

It is therefore difficult to understand the basis on which the Secretary of State has changed her position, but it is abundantly clear that the Secretary of State has chosen to disregard the consistent advice of an independent and expert regulator, and no purpose would be served by further representations that would only add to the unreasonable delay. This is a matter of some concern in a quasi-judicial process, where the Secretary of State must at each stage of the process take decisions in a manner that is reasonable, based on relevant considerations and sufficiently reasoned, so as to be amenable to judicial oversight; and not in a manner that is clouded by political considerations.

Without prejudice to the above, 21CF will be making no further representations and urges the Secretary of State to announce her decision before Parliament rises on Thursday.

Yours sincerely,

Jeffrey Palker

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

² Page 1: "We consider there are not sufficient concerns that may justify a reference in relation to the broadcasting standards consideration".

³ Page 1: "we do not consider that these are such as may justify a reference in relation to the broadcast standards public interest consideration".

⁴ Pages 5-6 of Ofcom's advice dated 25 August 2017.