HERBERT
SMITH
FREEHILLS

[redacted]
Deputy Director
Media Team
Department for Digital, Culture, Media & Sport
4th Floor
100 Parliament Street
London
SW1A 2BQ

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
T +44 (0)20 7374 8000
F +44 (0)20 7374 0888
DX28 London Chancery Lane

www.herbertsmithfreehills.com

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Your ref

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By email

Dear Sir

Response of Sky plc to the Secretary of State's Provisional Decision on a Reference

We are writing on behalf of Sky plc (**Sky**) in response to the Secretary of State for Digital, Culture, Media and Sport (the **Secretary of State**)'s provisional decision to refer the proposed acquisition by Twenty-First Century Fox, Inc. (**21CF**) of the remaining shares in Sky which it does not own (**Proposed Acquisition**) to the Competition and Markets Authority (**CMA**) on the grounds of the media plurality public interest consideration set out in section 58(2C)(a) of the Enterprise Act 2002.

Sky has seen a copy of 21CF's response to the Secretary of State and would add the following points.

The Independent Committee of Sky reached agreement with the 21CF Board on the terms of the offer for Sky, which it recommended to shareholders, on 15 December 2016. It is in the interests of Sky's shareholders that they have the opportunity to vote on this offer. A referral of the Proposed Acquisition to the CMA would mean that Sky's shareholders would be denied this opportunity for over a year from its announcement.

It is also in the interests of Sky, its shareholders and employees that merger reviews operate efficiently and with due expedition. Sky notes that clearance decisions in relation to the Proposed Acquisition have now been received from all other relevant regulatory authorities, following both merger control and media merger reviews. Prolonged uncertainty in this case and the associated disruptive impact on Sky's business should be minimised.

It is further in the interests of Sky, its shareholders and employees as well as in the broader public interest that merger control is depoliticised, objective, evidence-based and transparent, to avoid unduly dampening incentives to invest, expand and innovate. Sky notes in this regard Ofcom's advice to the Secretary of State that Ofcom:

> *"would have significant concerns that an undertaking based on structural separation may lead to the risk of the scale of Sky News decreasing over time, given the inherent difficulties in sustaining a loss-making unit outside of the Sky corporate structure. A degradation or loss of Sky News could potentially present risks to plurality equal to or greater than those presented by the transaction itself."*

Similarly, to the extent that Sky's continuing operation of Sky News results in undue restriction of or impediments to merger and other corporate opportunities available to Sky, this in turn could undermine Sky's ongoing commitment to and incentives to invest in Sky News, and present similar risks to plurality.

Sky notes the comprehensive package of undertakings offered by 21CF in lieu of referral of the Proposed Acquisition to the CMA. These undertakings reinforce and build on Sky's existing strong safeguards securing the editorial independence of Sky News, both structurally and behaviourally, in a manner that is apt to address fully the particular media plurality concerns Ofcom has identified as potentially arising as a result of the Proposed Acquisition.

However, if the Secretary of State, having given due and objective consideration, is unwilling to accept the 21CF undertakings and continues to consider that a Phase II review of the Proposed Acquisition is necessary, Sky urges a prompt referral decision prior to the Parliamentary summer recess, to ensure that the Phase II review can commence without further delay.

Yours faithfully

Herbert Smith Freehills LLP

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