

BY EMAIL ONLY

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Dear Joel

**Fox / Sky Merger Inquiry  
Revised Firewall Remedies**

We write further to the hearing with you on 14 February 2018 (the **Response Hearing**), and the discussions that took place regarding the Proposed Firewall Remedies that 21CF submitted to the CMA with its response to the Remedies Notice on 6 February 2018.<sup>1</sup>

For the reasons set out in detail in 21CF's response to the Provisional Findings, 21CF considers that the Provisional Findings do not provide a reasonable basis on which to conclude that the Transaction may be expected to operate against the public interest with respect to the Media Plurality Consideration. Correcting the errors contained in the Provisional Findings would allow the CMA to conclude that the Transaction does not raise media plurality concerns, and remove the need for any remedies to address such concerns.

Without prejudice to this, or to 21CF's view as to the effectiveness and proportionality of the Proposed Firewall Remedies, 21CF has considered the points that were raised by the CMA at the Response Hearing in relation to the Proposed Firewall Remedies. 21CF is willing to offer the revised undertakings attached to this letter (the **Revised Firewall Remedies**), which are designed to address these points. Specifically, under these Revised Firewall Remedies:

- (i) The duration of the commitment to maintain a Sky-branded news service has been extended from at least five years to at least ten years (Section 2.1). Linked to this, in addition to maintaining the Operational Net Investment in Sky News at a level not materially different from that set out in Annex 1 for five years from the Closing Date, 21CF shall also commit to a further five years of investment in Sky News at a level to be determined at the time, taking into account market conditions and the level of investment required to maintain a Sky-branded news service (Section 2.2).

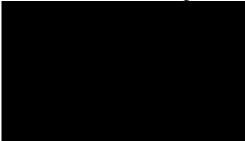
<sup>1</sup> Unless otherwise stated, defined terms in this letter have the same meaning as set out in 21CF's response to the Remedies Notice and the Revised Firewall Remedies.

- (ii) The commitment under Section 2.1 is no longer subject to 21CF owning more than 39.14% of the shares in Sky or a successor to Sky.
- (iii) The name of the board has been amended to the "Sky News Board" (rather than the Sky News Editorial Board).
- (iv) The Sky News Board is now required on an annual basis to prepare a statement confirming that no instances of influence or attempted influence of the editorial output of Sky News have been escalated to it by the Head of Sky News (Section 3.1(vi)) (subject to the requirement to keep a record of any such matters as already included in the remedies). 21CF is also required to publish a copy of any such statement in its annual report (Section 3.2).
- (v) In the event of the replacement of the Head of Sky News, the Sky News Board now has the explicit right to nominate a candidate for appointment to the role (Section 3.3(ii)).
- (vi) The events-based sunset mechanism contained in the Proposed Firewall Remedies has been replaced with a provision allowing the Secretary of State, upon the request of 21CF, to vary or release the undertakings in the event of a material change of circumstances (with an obligation on the Secretary of State to consult the CMA in relation to any such request) (Section 5).

I also enclose for your convenience a comparison between the Proposed Firewall Remedies and the Revised Firewall Remedies.

We trust that you will find these Revised Firewall Remedies satisfactory to address the points raised at the Response Hearing. 21CF stands ready to provide any further information the CMA may require.

Yours sincerely



**Antonio Bavasso**  
Partner

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**OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC**

UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 9 OF  
SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

**WHEREAS:**

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (d) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (e) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (f) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (g) Whereas under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (h) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the Transaction.

**1. EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect (subject to the variation and termination provisions in section 5) from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

**2. COMMITMENT TO MAINTAIN A NEWS SERVICE**

- 2.1 As at the Closing Date, and subject to variation and/or termination under section 5, 21CF shall continue to maintain a Sky-branded news service received primarily in the UK for at least 10 years from Closing Date.

- 2.2 21CF shall maintain the Operational Net Investment in its Sky-branded news service at a level not materially different (taking into account cost and revenue inflation) from Sky's level of Operational Net Investment in Sky News as set out in the Schedule attached under **Annex 1** for 5 years from Closing Date, after which 21CF shall provide a further 5 years of investment in Sky News at a level to be determined at the time, taking into account market conditions and the level of investment required to maintain a Sky-branded news service.
- 2.3 21CF shall procure that Sky UK Limited or any successor company that provides the Sky-branded news service will maintain financial records showing the annual Operational Net Investment in its Sky-branded news service (**Sky News Investment Report**) for at least 10 years from Closing Date. The Sky News Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State].

### 3. SKY NEWS BOARD

- 3.1 21CF will establish an editorial board (the **Sky News Board**), which will become effective immediately following the Closing Date and will be part of Sky UK Limited or any successor company that holds the licence for the Sky News service (**Sky UK**), and which will:
- (i) comprise solely members who are Independent Expert Board Members, with such members:
    - (A) initially comprising two existing Sky independent directors and a third member nominated by the Sky independent directors who has senior editorial and/or journalistic experience; and
    - (B) subsequently comprising members selected by the Nominating and Corporate Governance Committee of the 21CF Board and approved by [the Secretary of State] as meeting the criteria of an Independent Expert Board Member;
  - (ii) be chaired by an Independent Expert Board Member with senior editorial and/or journalistic experience;
  - (iii) be entrusted with oversight of the compliance of the Sky News services with the Sky News Editorial Guidelines, including provisions relating to editorial independence in news reporting and compliance with Ofcom's Broadcasting Code;
  - (iv) operate under terms of reference which will stipulate that the Sky News Board will:
    - (A) be adequately resourced and have powers to review and investigate all areas within the remit of the Sky News Board;
    - (B) meet at least two times a year;
    - (C) consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines as provided for under section 3.1(iii) above and report any such representations to the 21CF Board;
    - (D) advise the 21CF Board on any issues within its remit including the Sky News Board Approvals (as defined in section 3.3) below;

- (v) keep a written record of any matters escalated to it by the Head of Sky News as provided for in section 4.2(iii) below, and provide a copy of any such record to the 21CF Board and [the Secretary of State] certified as accurate by one Independent Expert Board Member;
- (vi) on an annual basis, subject to no written records having been made under section 3.1(v) in the preceding 12 months, prepare a statement confirming that no matters have been escalated to it by the Head of Sky News as provided for in section 4.2(iii) below, and provide a copy of any such statement to the 21CF Board and [the Secretary of State] certified as accurate by one Independent Expert Board Member; and
- (vii) be quorate only if at least one Independent Expert Board Member with senior editorial and/or journalistic expertise is present.

3.2 21CF shall ensure that either:

- (i) a summary of any report provided under section 3.1(v) above; or
- (ii) a copy of any statement provided under section 3.1(vi)

(as the case may be) shall be included in its annual report.

3.3 21CF shall ensure that the following matters at Sky UK take place only with the approval of a majority of the Sky News Board:

- (i) the appointment or removal of the Head of Sky News (with the Sky News Board having the right prior to any replacement of the Head of Sky News to nominate a candidate for appointment to the role);
- (ii) the remuneration package of the Head of Sky News;
- (iii) any material changes to the authority or reporting relationship of the Head of Sky News; and
- (iv) any future changes to the Sky News Editorial Guidelines.

(together the **Sky News Board Approvals**).

3.4 21CF shall not make any subsequent amendments to the Sky News Board Approvals without the prior approval of the Secretary of State.

3.5 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or a member of the 21CF Board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (including the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services).

#### **4. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES**

4.1 As at the Closing Date, 21CF shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section 4.2 below and as attached at **Annex 2** to these undertakings (the **Sky News Editorial Guidelines**).

- 4.2 As at the Closing Date, 21CF shall ensure that the Sky News Editorial Guidelines specify that:
- (i) the Head of Sky News retains complete editorial control over all news and current affairs output, including the selection and running of news stories and any political comment and opinion broadcast on the Sky News services;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
  - (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee or officer of 21CF outside the Sky News editorial function to influence the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services, the Head of Sky News will escalate such matters to the Sky News Board.
- 4.3 21CF shall not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State].

## **5. VARIATION AND TERMINATION**

- 5.1 These undertakings shall remain in force until such time as they are varied, released or superseded under the Order, or until such time as they lapse pursuant to section 2.1.
- 5.2 In the event of a material change of circumstances, the Secretary of State may, in response to a request from 21CF, vary or release one or more of these undertakings. Upon receipt of such a request, the Secretary of State shall consult the CMA on whether the change of circumstances identified in the request results in the adverse effects identified in the Secretary of State's Decision ceasing to apply.
- 5.3 The variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **6. COMPLIANCE**

- 6.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:
- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 6.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.
- 6.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section 6.3.

## 7. PROVISION OF INFORMATION

- 7.1 21CF shall furnish promptly to [the Secretary of State] such information as [the Secretary of State] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## 8. INTERPRETATION

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.

- 8.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**21CF Parent Company**” means any parent undertaking of which 21CF is a subsidiary undertaking (“parent undertaking” and “subsidiary undertaking” having the meanings given to them in section 1162 of the Companies Act 2006);

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means the date on which 21CF acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

“**CMA**” means the Competition and Markets Authority;

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Head of Sky News**” means the individual responsible for setting editorial strategy and direction for Sky News’ digital, television and radio output, including the appointment and dismissal of senior Sky News employees (including presenters);



**“Independent Expert Board Member”** means a member of the Sky News Board who:

- has experience in the UK media sector;
- has not been an employee of 21CF, News Corp or any member of the same Group of Interconnected Bodies Corporate as 21CF or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the Sky News Board, a material business relationship with 21CF or News Corp either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship;
- has not received and does not receive remuneration from 21CF or News Corp (other than a fee paid by 21CF for their service as a member of the Sky News Board), does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of 21CF's or News Corp's pension scheme;
- does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies;
- does not represent a significant 21CF or News Corp shareholder; and
- has not served on the board of 21CF or News Corp within nine years from the date of their first appointment

**“MFT”** means the Murdoch Family Trust;

**“News Corp”** means News Corporation;

**“Ofcom”** means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

**“Operational Net Investment”** means the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

**“Order”** means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

**“Secretary of State”** means Secretary of State for Digital, Culture, Media and Sport;

**“Sky”** means Sky plc;

**“Sky News”** means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and the Republic of Ireland and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business;



**“Sky News Editorial Guidelines”** has the meaning given to it in section 4.1 above;

**“Sky News Board”** has the meaning given to it in section 3.1 above;

**“Sky News Board Approvals”** has the meaning given to it in section 3.3 above;

**“Sky UK”** has the meaning given to it in section 3.1 above; and

**“Transaction”** means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own.

## ANNEX 1

## SKY NEWS OPERATIONAL NET INVESTMENT SCHEDULE

	FY 2016/17	Further details
Revenues <sup>1</sup>	[X]	Includes: wholesale of Sky News channel to [X] ; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs <sup>2</sup>	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
<b>Operational Net Investment</b>	[X]	

<sup>1</sup> Does not include: Sky Media[X] sales commission for provision of ad sales.

<sup>2</sup> Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.

**ANNEX 2**  
**UPDATED SKY NEWS EDITORIAL GUIDELINES**