

21ST CENTURY FOX/SKY MERGER INQUIRY (PHASE 2)

Summary of response hearing with 21st Century Fox, Inc held on 14 February 2018

Introduction and opening remarks

1. 21st Century Fox, Inc (Fox) outlined the key points of its response to the Competition and Markets Authority's (CMA) provisional findings on the Transaction. Fox welcomed the CMA's provisional findings on the broadcasting standards public interest consideration.
2. Fox stated that it was disappointed with the CMA's provisional findings on the media plurality public interest consideration, and that the CMA's assessment was based on legal and analytical errors.

Fox's proposed remedy

3. Fox explained that its proposed 'Firewall Remedy' enhanced in a number of material respects the undertakings in lieu offered at phase 1, with adjustments to address directly the points raised in the CMA's Remedies Notice and taking into account the implications of the provisional findings on certain matters.
4. Fox stated that its starting point was to preserve the status quo, and that the Firewall Remedy also goes beyond this by preserving Sky News' editorial independence, and setting up a system of formal governance of Sky News, backed by formal undertakings and the possibility of enforcement in case of breaches.
5. Fox explained that there was a real benefit to Sky News remaining a part of the Sky organisation, because of its reliance on technical and commercial support functions currently provided by Sky, and that the proposed remedy sought to maintain this whilst addressing the CMA's concerns regarding editorial independence and influence, as raised in its provisional findings.
6. Fox said that the Firewall Remedy would insulate the Head of Sky News and, therefore, Sky News from any potential influence, through the creation of a fully independent expert Sky News Editorial Board (the Sky News Board). Fox explained that this was backed by a commitment in the Firewall Remedy that

no employee or officer of Fox or a member of the Fox board who is a trustee or beneficiary of the Murdoch Family Trust (MFT) will influence or attempt to influence the editorial choices made by the Head of Sky News, as well as by clear reporting lines.

7. Fox explained that the proposed Sky News Board would comprise solely independent members that had relevant UK media industry experience. Initially it would comprise two existing Sky independent directors, with a third member nominated by the Sky independent directors who has senior editorial and/or journalistic experience. Fox also noted that the Secretary of State (or Ofcom or the CMA if considered more appropriate) would have a role in approving the appointment of subsequent members.
8. The Sky News Board would be responsible for the process of recruitment, approval and appointment of a new Head of Sky News. Day to day reporting by the Head of Sky News would remain with a senior executive at Sky, to ensure the Sky News Board was not burdensome on daily operations.
9. Fox stated that the proposed remedy would guarantee a level of funding for Sky News over a fixed timeframe and crystallise the role and responsibilities of the Head of Sky News as the person responsible for setting Sky News' editorial strategy and direction.
10. Fox would entrust the Sky News Board with an oversight function to ensure that the Head of Sky News continued to be able to set the editorial agenda freely without seeking permission from the Sky News Board, unless seeking material changes to guidelines or policies.
11. Fox added that the Firewall Remedy provided for reporting lines, monitoring and enforcement of compliance with the undertakings. The revised Sky News Editorial Guidelines include provisions requiring staff to report any attempts to influence them to the Head of Sky News. The Head of Sky News would then be required to report any such attempts to the Sky News Board, who would then be required to report them to the Fox board and to the Secretary of State (or appropriate), as well as disclose such attempts publicly. There would therefore be an action both within the company and from outside the company.
12. Fox said that it would be open to making a public annual positive statement of compliance with the undertakings. Fox stated that a breach of the undertakings by an employee – at any level – would be treated very seriously and most likely result in the termination of employment.

13. Fox explained that its commitment to fund Sky News for five years was because it considered the media industry to be unpredictable and fast paced and making a commitment beyond this timeframe would be challenging.
14. Fox said that it was potentially willing to commit to maintain the Sky News service for ten years, with a funding review after five years.

Prohibition of the Transaction

15. Fox noted that it was difficult for it to comment on the effectiveness of prohibition, given that it does not believe that the Transaction gives rise to concerns that necessitate any remedy.
16. Fox said that while prohibition would by definition avoid the possibility of an increase in the relative control of the MFT's interests in Sky, such a remedy would be disproportionate and less effective than the Firewall Remedy proposed by Fox. Fox noted that, while Sky News provided brand value to Sky, a prohibition would result in Sky's shareholders losing out from the takeover premium, and continuing to operate Sky News (which is a very small part of the overall Sky business) would ultimately be down to the judgement of the Sky board, in the interests of its shareholders.
17. Fox said that it considered prohibition to be a disproportionate remedy, because it would prevent Sky (and therefore Sky News) from benefiting from the Transaction, in particular the possibility to bring Sky to a global platform which would benefit Sky as whole (and also Sky News). Prohibition would also result in a situation that is worse than the status quo if Sky were to decide to shut down Sky News.
18. Fox stated that the anticipated acquisition by The Walt Disney Company of Fox was not conditional on the conclusion of the Transaction.

Divestiture of Sky News

19. Fox agreed that it would be possible but difficult to structure a divestment of Sky News in a way that would make it an attractive proposition to third party investors.
20. Fox stated that divestment of Sky News would not yield much monetary value, and may also require commitment in relation to carriage agreements and services in order to make it attractive to investors.
21. Fox said that the commitment of a new buyer to run Sky News would be less attractive compared to Fox's long term commitment and the value the

Transaction would give to Sky News in providing support functions and making it part of a large media enterprise.

Spinning-off Sky News

22. As a preliminary point, Fox noted that the structural ownership separation that the 2011 remedy was designed to achieve had been achieved in the 2013 split between the Fox and News Corporation businesses.
23. Fox said that spin-off as a remedy had pros and cons. Fox explained that Sky News was a small business to spin off and may face problems such as public listing company costs and attracting investors (which again may require significant funding commitment in relation to carriage agreements).
24. Fox noted that the complexities of achieving a spin-off could be avoided given that a further structural governance separation would be achieved with the Firewall Remedy through the Sky News Board.
25. Fox also reiterated that Sky News would be in a better, stronger position if it were part of the overall Sky business.