

ANTICIPATED ACQUISITION BY 21ST CENTURY FOX, INC. ("21CF") OF SKY PLC ("SKY"):

RESPONSE BY NEWS CORPORATION ("NEWS CORP") TO THE CMA'S PROVISIONAL FINDINGS

This submission provides comments by News Corp in response to certain aspects of the CMA's provisional findings published on 23 January 2018 (the "Provisional Findings") in relation to the proposed 21CF/Sky transaction.

News Corp is not a party to the transaction and its comments are limited to addressing the CMA's provisional conclusions concerning the purported exercise of control or influence by Rupert Murdoch over the editorial positions of The Times and The Sunday Times newspapers and the limited weight placed by the CMA on the effectiveness of the statutory undertakings given by Rupert Murdoch in 1981 in relation to The Times and The Sunday Times newspapers (the "Undertakings") in constraining such influence. The relevant undertaking is found at paragraph 4(b)(ii) of the Secretary of State's consent to the transfer of the newspapers and (in slightly amended form) at paragraph 107(B)(2) of the Articles of Association of Times Newspapers Limited:

"The Editor of each newspaper shall retain control over any political comment published in his newspaper and, in particular, shall not be subject to any restraint or inhibition in expressing opinion or in reporting news that might directly or indirectly conflict with the interest of any of the newspaper proprietors (within the meaning of Section 57 of the Fair Trading Act 1973) of The Times or The Sunday Times".

Hence the Undertakings ensure that Rupert Murdoch maintains the independence and authority of the editors of The Times and The Sunday Times over the political policy of the newspapers and in all respects maintains the titles as editorially independent newspapers of high quality, with each editor being free to make his own decision on matters of opinion and news.¹

News Corp submits that, when all the evidence is properly considered, there is no sound basis for questioning the efficacy of the Undertakings in ensuring that the editors retain control over the political policy and editorial independence of their newspapers. This is clear from the evidence provided to the CMA by those currently involved in the operation of the newspapers:

- As is noted in the Provisional Findings, Rebekah Brooks, the current CEO of News UK, told the CMA that she considers that editorial policy at News UK papers is set by their editors, and this was confirmed by the editors themselves who *"told us that they have editorial independence and Rupert Murdoch's occasional discussions with them do not affect this."*²
- As is further acknowledged in the Provisional Findings, John Witherow, editor of The Times since 2013, confirmed that the Undertakings *"work very effectively"* and Rebekah Brooks made clear that there is *"absolute respect"* for them.³
- The Undertakings do not prevent Rupert Murdoch from expressing views, whether directly or indirectly, in relation to the editorial output of the titles. Nevertheless, John Witherow was clear that Rupert Murdoch *"does not make comments to him on editorial views, the running order of news or choice of stories."*⁴
- John Witherow also drew the CMA's attention to the fact that the editorial independence of The Times has been clearly demonstrated where *"he as editor and [Rupert Murdoch] have*

¹ See press statement by Times Newspapers Holdings Limited of 22 January 1981 announcing the Undertakings. Notably, in its Report to the Secretary of State, 20 June 2017, paragraph 2.58, Ofcom confirmed that no evidence had been provided to it of any breaches of the Undertakings.

² Provisional Findings, paragraph 7.33.

³ Provisional Findings, paragraphs 7.45 and 7.46.

⁴ Provisional Findings, paragraph 7.38, footnote 175.

had diverging views on important political issues such as support of Tony Blair's government, Scottish Independence and Brexit."⁵

News Corp considers that the CMA has given insufficient weight to this evidence in reaching its Provisional Findings and has instead attached too much importance to the views of individuals who have had no involvement in the operation of The Times or The Sunday Times for some time:

- The Provisional Findings refer to the views or experiences of former editors of The Times and The Sunday Times to support the contention that Rupert Murdoch has influence over these newspapers.⁶ The first of these is Sir Harold Evans but his views date back to comments made several decades ago, in 1982. The second is Andrew Neil who also ceased to be editor of The Sunday Times many years ago, in 1994. His recollection does not accord with the experience of John Witherow who was appointed editor of The Sunday Times after Mr Neil in 1994 and who remained as editor until 2013 when he was appointed editor of The Times. The third reference is to a comment made by James Harding which was upon his resignation in 2012.
- To the extent that regard should be had to the views of former editors, News Corp submits that the CMA should take due account of the evidence given to it by another former editor of The Times, Sir Peter Stothard (1992-2002). Surprisingly the Provisional Findings do not make any reference to the views of Sir Peter, even though he attended a hearing with the CMA. Sir Peter told the CMA that his relationship with Rupert Murdoch was "*[in] no sense ... part of any system of control*"⁷, and went on to explain that he was "*completely confident in [his] freedom to ... say what [he] wanted to say*" as editor.⁸

In conclusion, News Corp submits that the Provisional Findings considerably over-state the extent of influence that Rupert Murdoch exercises over the editorial positions of The Times and The Sunday Times. In particular, the Provisional Findings do not adequately acknowledge the effectiveness of the Undertakings in ensuring that the editors of The Times and The Sunday Times retain control over the editorial output of their newspapers. John Witherow made very clear at the CMA's hearing with The Times that as editor he has overall responsibility for the newspaper and enjoys editorial independence protected by the Undertakings, which allows him to drive the direction of the newspaper in response to the issues of the day with high quality reporting and analysis. News Corp would therefore ask that the CMA reconsider these points and give due weight to them in its final report to the Secretary of State.

News Corp
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⁵ Summary of The Times hearing, paragraph 34.
⁶ Provisional Findings, paragraphs 7.44 and 7.47.
⁷ Sir Peter Stothard Hearing, page 12, lines 23-24.
⁸ Sir Peter Stothard Hearing, page 15, lines 23-25.