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BY EMAIL ONLY

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Competition and Markets Authority
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Dear Ms Lambert

21st Century Fox, Inc. (“21CF”) / Sky Plc merger inquiry – Response to provisional findings

The Media Reform Coalition welcomes the panel’s provisional findings that the transaction may be expected to operate against the public interest on plurality grounds. We particularly welcome the new evidence gathered in respect of the relative performance of Sky News and News Corp titles on intermediaries, and the comparative analysis of meetings between ministers and media groups over the last two years.

Combined, this evidence addresses key outstanding issues raised by Ofcom’s phase one report and also speaks to the heart of concerns that the transaction may result in a) a significant reduction in the number of viewpoints accessed by, and accessible to UK news consumers and b) a significant increase in the ability of the Murdoch Family Trust (MFT) to influence both the public and policy agenda.

In our previous submissions to the Inquiry, we have presented limited new evidence on both these points, suggesting that Sky News – as well as News Corp titles – has a relatively strong presence on major intermediaries, and that Rupert Murdoch and News Corp representatives tend to meet with senior government figures far more regularly than any other organisation or individual. We note that both of these points are reinforced by the new evidence presented in your provisional findings.

This further demonstrates that, in spite of technology driven changes to the news landscape over recent years, the significance of both Sky News and News Corp titles as major news brands across platforms remains constant and, if anything, has increased.

We have further submitted that Ofcom’s phase one report understates this cross-platform presence for two reasons. First, we have presented evidence showing that both Global and

Bauer radio stations rely at least to some extent on Sky News as a common wholesale news source, which was not accounted for in Ofcom's analysis. We note that the provisional findings concur with this assessment in principle, as reflected in the sensitivity analysis of the cross platform 'share of references' measure. Second, we presented interim findings from our recent 'agenda leading' study suggesting that – for the sample period analysed – News UK titles combined had the most significant influence over the headline news agenda across a uniquely wide sample of outlets on all platforms. We note that the provisional findings concur that this evidence supports the view that traditional news providers ensemble play a significant part in driving the news agenda. We also note the panel's provisional view that the sample period and scope of the data was too limited to derive robust conclusions about the relative agenda influence of individual news providers. As we have noted in our previous submissions, this research is on-going and we expect the final results – covering a substantially longer time period and including data on 'self-generated' stories by news providers – to broadly reinforce the interim findings. However, we acknowledge that these results will be published outside of the Inquiry's timeframe.

Finally, we note that the provisional findings do not support the view that the transaction may be expected to operate against the public interest on the grounds of broadcasting standards. On this point we wish to reiterate our concerns raised in previous submissions, with particular regard to the meaning of 'genuine commitment' to broadcasting standards, as set out in section 58(2C)(c) of the Enterprise Act 2002 ('the Act').

We are particularly concerned that the provisional findings do not take due account of the approaches of News Corp (as a company controlled by the MFT and in which members of the Murdoch family hold senior positions) to wider regulatory compliance and corporate governance, and the bearing that this has on any assessment of 'genuine commitment' to broadcasting standards post-transaction.

On this point we acknowledge that media proprietors cannot always be held fully responsible for the ethical transgressions of their employees even when such transgressions are criminal in nature, extend over a substantial period of time, and persist under successive editors. It follows that the evidence of phone hacking and other criminal and ethical malfeasance within newsrooms controlled by the MFT (including both Fox and News Corp) which has continued to amass over recent years, and since the first part of the Leveson Inquiry was completed in 2012, does not in and of itself rule out the possibility of a 'genuine commitment' to broadcasting standards post-transaction.

However, what is surely germane to the issue of 'genuine commitment' in this context, and suggested in the relevant explanatory notes to the Act and DTI guidance, is the *responsiveness* of proprietors to such evidence of wrongdoing. On this point the record of the MFT provides little confidence that any failures associated with a breach of broadcasting standards will be dealt with in a manner that is proportionate, timely and effective.

As early as 2002, the Information Commissioner raised concerns regarding the use of private investigators by newspapers controlled by the MFT for illegal surveillance as well as

payments to police and other public officials, charges that were vociferously denied by News Corp at the time.¹ A Commons Select Committee report published in 2012 was unequivocal in its allegation that News Corporation exhibited “wilful blindness” by ignoring evidence of widespread wrongdoing.² And as recently as last October, News Group Newspapers admitted “vicarious liability” in illegal hacking at the *Sun* newspaper which the company had hitherto denied, and which extended far beyond interception of voicemails.³

On the basis of such evidence, we consider that Sky’s exemplary record on broadcasting standards is likely to be put at risk as a result of the increase in control by the MFT post-transaction. We believe this casts further doubt over the appropriateness or efficacy of behavioural remedies (as noted in our previous submission of 6th February).

Finally, we wish to thank the Inquiry for the opportunity to contribute our views on both the remedies and provisional findings in relation to this transaction. Notwithstanding the proposed merger between Fox and Disney, we believe the transaction has unprecedented and critical implications for the public interest on the grounds of both plurality and broadcasting standards.

Yours sincerely

Dr Justin Schlosberg

For and on behalf of the Media Reform Coalition

¹ See http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/21_07_11_icomotorman.pdf

² See <https://publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/903/903i.pdf>

³ See <https://www.theguardian.com/media/2017/oct/06/murdochs-news-group-admits-benefiting-from-hacking-of-army-officers-emails>