

**COMPETITION AND MARKETS AUTHORITY  
21<sup>st</sup> CENTURY FOX/SKY MERGER INQUIRY**

**Notes of a hearing with politicians  
held at Competition and Markets Authority, Southampton Row, London  
on Wednesday 21 February 2018**

**PRESENT:**

**FOR THE COMPETITION AND MARKETS AUTHORITY**

Anne Lambert	- Chair
Tim Tutton	- Member
John Krumins	- Member
Sarah Chambers	- Member

**FOR THE STAFF**

Joel Bamford	- Project Director
Adam Land	- Senior Director of Remedies, Business and Financial Advisers
Steven Pantling	- Assistant Director of Remedies, Business and Financial Advisers
Bill Roberts	- Assistant Director of Remedies, Business and Financial Advisers
Andrea Gomes da Silva	- Senior Legal Director
Sabrina Basran	- Project Manager
Jennifer Halliday	- Project Director
Sen Rudran	- Assistant Director of Remedies, Business and Financial Advisers
Timothy Ker	- Legal Adviser
Lourenco Ventura	- Assistant Legal Director
David du Parc Braham	- Assistant Project Director
Tim Capel	- Legal Director

**FOR THE POLITICIANS**

Rt Hon Lord (Charles) Falconer (of Thoroton), Member of the House of Lords

Rt Hon Ed Miliband MP, Member of Parliament for Doncaster North  
Rt Hon Kenneth Clarke QC, MP, Member of Parliament for Rushcliffe  
Lynsey Tod, Senior Parliamentary Assistant to Ed Miliband  
Leo Watkins

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1 THE CHAIR: Thank you for coming. I will just start with the introductions from our  
2 side. I am Anne Lambert, the chair of the group, and the other members of  
3 the group are ...

4 Q. (Mr Tutton) Tim Tutton.

5 Q. (Mr Krumins) John Krumins.

6 Q. (Ms Chambers) Sarah Chambers.

7 THE CHAIR: And the staff team is led by ...

8 Q. (Mr Bamford) I am Joel Bamford, and I am the project director on the case.  
9 We will do the front row.

10 Q. (Mr Land) I am Adam Land. I head up our remedies function.

11 Q. (Mr Roberts) Bill Roberts, remedies and business adviser.

12 Q. (Ms Gomes da Silva) Andrea Gomes da Silva, senior legal director.

13 THE CHAIR: And behind are other valuable members of the team, but they will  
14 identify themselves if they speak.

15 Let me just do the procedures. As you know, a transcript of this hearing will  
16 be taken as a record of what was said, and we will send you a copy of the  
17 transcript in about a week. Can you check it for accuracy and amend it to  
18 correct any errors. If you want to add to or amend your evidence, please can  
19 you do so in a separate letter.

20 As discussed and agreed with you, in the spirit of openness with which we are  
21 conducting this inquiry we will publish the transcript on our website, and you  
22 will receive a copy of this prior to publication to enable you to check it for  
23 accuracy and any information that you consider confidential so we can take  
24 that into account.

25 Just before we start, let me say a few words about the hearing. We have

1 received your two submissions: one on 6 February in response to our  
2 remedies notice; and one on 13 February, which was a response to our  
3 provisional findings. The aim of this hearing is to explore your responses to  
4 the remedies, not so much to the provisional findings though we have read  
5 them and we are going to take them into account, it is your response to our  
6 remedies notice, which we published following our provisional finding that the  
7 transaction may be expected to operate against the public interest on media  
8 plurality grounds but not against the public interest on grounds of  
9 broadcasting standards, and today's hearing is on the basis of those  
10 provisional findings, though they remain provisional and we have yet to make  
11 our final decision.

12 I was going to invite you to start with some opening comments. You are  
13 welcome to address your comments to the provisional findings, but, as I said,  
14 our questions will be only on your response on remedies.

15 My lawyers will get very cross with me if I do not say this last bit; I am looking  
16 at the lawyers there! I have to remind you as we remind everyone that it is a  
17 criminal offence under section 117 of the Enterprise Act 2002 to provide false  
18 or misleading information to the CMA at any time including at this hearing.

19 A. (Mr Miliband) Thank you so much for seeing us, and thank you for all of the  
20 work that you have been doing on this incredibly important issue. We have  
21 Lynsey Todd, Leo Watkins, Ken Clarke and Lord Falconer; apologies from  
22 Sir Vince Cable, who is detained with the Finance Bill in the House of  
23 Commons, which explains his absence.

24 If it is all right with you, Charlie was going to lead off, just to set out  
25 reasonably briefly our thoughts on the issue of remedies. Perhaps if there is

1 time at the end Charlie could say something about the issue of broadcasting  
2 standards – I know you do not want to cover it in any detail in this hearing –  
3 and then maybe I will round off at the end. Charlie, I will hand over to you.

4 A. (Lord Falconer) Focusing only on remedies, we say that the only effective  
5 and comprehensive remedy is prohibition not either divestiture, carve out or  
6 behavioural remedies. Despite the fact that both carve out and divestiture is  
7 floated in your document about remedies, you do not then get it picked up by  
8 Fox or Sky at all. We think that is not surprising, because we do not think  
9 either a carve out or a divestiture is a feasible, practical or sensible remedy. It  
10 ultimately involves people buying into a loss-making company, which we do  
11 not think alternative shareholders would want to do. In any event, if falls foul  
12 of most of the problems in relation to behavioural remedies. We are more  
13 than happy to answer questions on divestiture or carve out, but we focus  
14 primarily on behavioural remedies.

15 We think the approach you should take in relation to behavioural remedies is  
16 that behavioural remedies you should regard as not being either a normal or  
17 an optimum solution. The circumstances in which a body may be thinking  
18 about behavioural remedies is where a prohibition, which is the only other  
19 alternative here, is not feasible and the costs of prohibition far exceed the  
20 benefits to be obtained by it. Secondly, behavioural remedies are to be  
21 thought of where they are only for a short duration. The behavioural remedies  
22 here are effectively forever, as I understand, in the way that they have been  
23 put. Thirdly, where the benefits of the merger to the consumer so far  
24 outweigh the dis-benefits of behavioural remedies, in those exceptional  
25 circumstances you should allow it.

1 None of those circumstances applies here. Prohibition gives the protection  
2 that is required against the identified problems in relation to plurality that you  
3 have with pretty considerable care identified in your report. Do not be lured  
4 into behavioural remedies that, to use the language of Andrew Neil, would just  
5 be an establishment stitch-up or figment in order to justify and to destroy the  
6 benefits of what you have identified with real care, namely the danger to  
7 plurality; but we put our submissions in a much more detailed and forensic  
8 way than simply being lured into the establishment stitch-up.

9 You have identified with considerable care at paragraph 42 of your summary  
10 of finding on plurality, how control would be exercised. We have to focus on  
11 what the plurality risk that you are identifying is. I understand your plurality  
12 risk to be that which is identified in paragraphs 91-92, which is Murdoch in  
13 effect gets great control over Sky News and that then reduces potentially the  
14 number of outlets expressing different viewpoints; 41 and 42 of your summary  
15 identify how the MFT would exercise that control.

16 You have identified five factors, and it is important to identify those five factors  
17 and how the proposed behavioural remedies would deal with that. First of all,  
18 there is budgetary control. The offer, as I understand it, is for five years flat  
19 and at the end of five years will continue, but as to what will give will depend  
20 upon -- we have looked at the additional letter from Allen & Overy as well; so,  
21 we know the whole thing. You will know this better than we do, but basically  
22 the arrangements here are that Sky News will be completely dependent on  
23 Sky and Fox for the whole of its budget. It will be completely dependent,  
24 therefore, on its masters in relation to it, which would normally provide quite  
25 an inhibition on taking a different view from Fox. Five years flat is not much of

1 a promise. "How much we give you after five years depends upon the view  
2 we take of the market": that point is an incredibly good whip to hold over the  
3 management of Sky News. Irrespective of whether or not it is a good whip,  
4 any sensible company, including the Head of Sky News, would do everything  
5 in his or her power to be on terms with 21<sup>st</sup> Century Fox. The offers given in  
6 relation to that do not offer much consolation, and nor could they.

7 Secondly, strategic direction will be set in practice by 21<sup>st</sup> Century Fox. The  
8 undertakings do not touch that. They do touch editorial strategy, which is  
9 intended to be left in the hands of the Head of Sky News, but what would the  
10 position be in relation to commercial strategy if 21<sup>st</sup> Century Fox, for example,  
11 said, "We should be targeting old people, because they are the people who  
12 most watch Sky or Fox", "We find that the most effective way of dealing with  
13 news or current affairs is to focus much less on rolling news and much more  
14 on comment programmes", or, for example, "We think that the way that you  
15 should deal with your strategic approach is to focus on the white working  
16 class, because they are our biggest expenditure area". That sort of  
17 examination of what the demographic is like is not in any way inhibited by any  
18 of the undertakings that are given, and the reason why 21<sup>st</sup> Century Fox  
19 would be owning Sky News would be for its commercial interest at best and at  
20 worst because the MFT and Murdoch wanted to influence Sky News to  
21 increase their political and hence their commercial power. None of the  
22 undertakings touches that.

23 Thirdly, synergy of assets: none of the undertakings offered touches that.

24 Fourthly, in relation to appointment of key personnel, what you have is an  
25 offer that – and this is how we understand it – 21<sup>st</sup> Century Fox appoint the

1 Head of Sky News not the editorial board. The undertaking that is offered, as  
2 I understand it, is to oversee the process not to make the appointment. The  
3 editorial board has a new name, I think, in the second letter, but they are  
4 called the editorial board in the first letter. They are not intended to be a  
5 board of Sky News; they are intended to be some safeguarders who meet  
6 twice a year in relation to this and have a role in relation to the appointment of  
7 the Head of Sky News, the editorial guidelines and the remuneration of the  
8 Head of Sky News.

9 Looking at the second letter, it becomes absolutely apparent that it is either  
10 Sky or Fox who are going to appoint the Head of Sky News. You get that  
11 from the fact that the editorial board are entitled to nominate "a name" to the  
12 process, which I read as meaning they can nominate one name, the names  
13 come from either Sky or 21<sup>st</sup> Century Fox who make the nomination and it is  
14 effectively in the hands of 21<sup>st</sup> Century Fox as to who it is. The editorial board  
15 can say, "Hey, we did not like the process", but that is it.

16 By the by, the initial members of the editorial board are appointed by the  
17 independents as we leave Sky News; thereafter they are appointed by 21<sup>st</sup>  
18 Century Fox, this nominating and governance committee, which is made up at  
19 the moment, though no assurances are given, by the independent members  
20 of 21<sup>st</sup> Century Fox. You absolutely demolished that in your report, because it  
21 would be absolutely legitimate for the nominated committee to be motivated  
22 by their fiduciary duty to 21<sup>st</sup> Century Fox. If they thought the right course was  
23 to have an editorial board that would favour a Head of Sky News who took for  
24 example the same strategic view as 21<sup>st</sup> Century Fox that what you want is a  
25 company that focuses much more on comment than news – that is how you

1 make money – focuses on old people and focuses, say, on the white working  
2 class. There would be nothing wrong with Mr Murdoch or the MFT saying that  
3 to the 21<sup>st</sup> Century Fox board and then the independent members agreeing  
4 that is sensible for the commercial strategy of 21<sup>st</sup> Century Fox, asking the  
5 people that are going to appoint the editorial board, “What do you think of this  
6 commercial strategy?” and then only appointing people who agree.

7 The only limits on who you appoint to the editorial board are that they should  
8 not work for 21<sup>st</sup> Century Fox and they should have some experience in the  
9 UK media. You have the “safeguard” that the Secretary of State has to be  
10 satisfied that the criteria have been fulfilled. That means, to take an example,  
11 Murdoch gets three people who have big ambitions in British media, he  
12 appoints them to the editorial board, they all satisfy the UK media and  
13 non-connection criteria and they all understandably see that if they play their  
14 cards right they may have a future in one or other of Mr Murdoch’s  
15 companies. The idea that this provides any safeguard is completely  
16 ridiculous.

17 I assert that not just on the basis of assertion. Look at the 1981 undertakings.  
18 We say they have not been complied with. We say they have offered  
19 absolutely no protection to the editor of The Times or The Sunday Times.  
20 Harold Evans, Andrew Neil and, in 2013, James Harding all say they were  
21 sacked in effect without any consultation with the independent editors. That  
22 would not be enough, it seems to me, to avoid what I think would be very  
23 substantial criticism of this process, if at the end of the day it produced  
24 something that had so conspicuously failed in the past. The way you have  
25 drafted your report in relation to this is you have set out the criticisms of the



1 undertakings in 1981, you have then quoted Mr John Witherow, the current  
2 editor of The Times, completely dependent on Mr Murdoch, and  
3 Ms Rebekah Brooks, who is the chief executive of News Corporation, who  
4 was cast into outer darkness until she was acquitted and then brought back  
5 into News Corporation, as saying, "Actually, it all works fine". You sensibly  
6 reach the conclusion that there are some question marks in your mind as to  
7 whether it works fine. I submit you should find it does not work fine, because  
8 of the Evans/Neil/Harding example.

9 Even if we are wrong about that, what it absolutely demonstrates is how  
10 utterly worthless these sorts of undertakings are, because it is impossible to  
11 identify whether or not they are being broken or not if you were to conclude  
12 that you do not know whether they are being broken or not, and that is  
13 consistent with the approach that is taken by the competition authorities -- I  
14 appreciate this is not a competition case, but it is well worth looking at the  
15 circumstances in which behavioural remedies are accepted in competition  
16 circumstances. What is the point of undertakings like this that Mr Murdoch  
17 and the MFT can argue about for years as to whether they are complied with?  
18 Behavioural undertakings are really only appropriate where it is pretty clear  
19 whether there is a breach or not. "I undertake if you will let this possibly  
20 anti-competitive merger to go ahead I promise I will not sell a particular sort of  
21 goods", "I promise I will not sell in London", or, "I promise I will not sell in  
22 Scotland": it is a bright line as to whether that has been satisfied. What you  
23 are being asked to accept here I really, really implore you not to accept,  
24 because it would make the legislators feel that all the efforts that had been  
25 made to try to get effective remedies in the media have failed. You are being

1 asked to give behavioural remedies in respect of one division of a company  
2 being run by its bosses, in effect, with no intervening company in the middle,  
3 and you are being told it will be self-policing. I am not putting this in a  
4 “disbelieve Murdoch” -- I am saying it flies so strongly in the face of what any  
5 lawyer would think was remotely practical or sensible. “Leave it to us. We will  
6 police ourselves. We told you that in 1981”; and nobody can now decide  
7 whether or not there has been a breach of the undertakings or not. These  
8 behavioural undertakings are not worth the paper they are written on, from the  
9 point of view of a lawyer, and that is saying nothing about the way that  
10 Murdoch would view them.

11 My last point is the fifth point that is referred to in your excellent paragraph 42  
12 is that they can directly say what they want. That is Murdoch saying what he  
13 wants in his newspapers. Remember the evidence – and we refer to it at  
14 page 9 of the submissions we have put in on remedies – of what Leveson  
15 said after hearing a year of evidence. It is basically he does not even need to  
16 ask to get his way in relation to editorial approval. Rupert Murdoch’s editors  
17 would not need to ask him for his opinion on any particular topic. They would  
18 know his thinking on the issues of the day in general terms and could work out  
19 what it would likely be in any specific instance. Some have likened this  
20 process to the workings of the metaphorical radiations of the Sun King, but in  
21 fact it is no more than basic common sense, and that is not Andrew Neil,  
22 Harold Evans or somebody like that; it is Lord Justice Leveson after hearing a  
23 year of evidence about that. What is the good of undertakings, “I”, Murdoch,  
24 “promise not to say to them, ‘Could you please support the Iraq War?’” He did  
25 not need to say it. “I say”, in brackets, “it is fine even on these undertakings

1 for other members of my board", of 21<sup>st</sup> Century Fox", to go and say, 'Rupert  
2 thinks the way that this should be dealt with is by focusing on comment much  
3 more than rolling news and focusing on elderly people; and obviously you  
4 choose what goes in or why, but the position is that this is the commercial  
5 direction of the company". I worry about the process if having reached the  
6 conclusion that plurality is threatened you then say, "Okay, you can go ahead"  
7 in relation to it. Those are my points.

8 A. (Mr Miliband) Thanks, and – just one or two things to what Charlie said – in  
9 Charlie's opening he talked about one of the issues about behavioural  
10 remedies; I believe that was quoting from Competition Commission and  
11 existing CMA guidance, just for clarity's sake.

12 A. (Lord Falconer) The stuff about effectiveness and comprehensiveness comes  
13 in paragraph 1.4 of the Competition --

14 Q. (Mr Land) It is okay, I drafted the guide!

15 A. (Mr Miliband) I just wanted to be clear that that was not our assertion, no, this  
16 is your own very sensible view!

17 A final point just to make is this, which is Charlie has, if I may say so,  
18 demolished the behavioural remedies on offer but I think we are also making  
19 a further point, which is any behavioural remedy by its very nature intrinsic to  
20 that behavioural remedy, leaves Sky News as a division of Fox, leaves Fox in  
21 charge of the budget, leaves Fox in charge of the brand and gives Fox  
22 enormous power. Whatever behavioural remedies you put in place, that is the  
23 power that Lord Justice Leveson meant. There is the unspoken power that he  
24 was drawing our attention to in that incredibly important, landmark report that  
25 he set out, and it really is not surprising, because if you are part of the

1 Murdoch empire you are dependent for your future prospects across that  
2 empire on doing what Rupert Murdoch says; and just the final point I would  
3 make in that context is that I interpret your paragraph 27 of your provisional  
4 findings, where you raise questions about the so-called 2011 carve out  
5 solution -- and I am not quoting you directly, but you raise the question of  
6 issues about the reliance on Sky's resources, the reliance on Sky's brand and  
7 the reliance on Sky's facilities. If those qualms apply -- and I believe they do --  
8 to the carve out that was proposed in 2011, they apply in spades to the  
9 behavioural remedies, because the carve out was at least trying to carve out  
10 the company in some sense, this is not doing so and that balance-of-power  
11 issue that you were drawing attention to seems to me to be absolutely crucial.  
12 Thank you.

13 A. (Mr Clarke) I would just add a few words, if you are allowing us to, and I will  
14 not repeat them, but I think Charlie has dealt very comprehensively with the  
15 real issues surrounding these undertakings. I plan not to compete with  
16 Charlie. I come here not as a lawyer; I am a very out-of-date lawyer! But as a  
17 participant in government, opposition and in political debate and the impact of  
18 abandoning our rules or relaxing our rules on plurality may have on those is  
19 what concerns me.

20 I have been involved in this all the way through, and, again, I am not going to  
21 go back too much -- I think I touched on most of the things last time -- but just  
22 bear in mind what the undertakings and the remedies you are talking about  
23 are going to have to resist and how strong they are going to have to be if we  
24 are not to make a further significant lurch into concentration of ownership,  
25 because I personally believe the arrival of Murdoch in the United Kingdom led

1 to problems of concentration of ownership in the newspaper business. The  
2 arrival of Murdoch, and probably Conrad Black as well, changed the scene,  
3 really, even from what we had before, in terms of the political influence of  
4 newspapers and the use of newspapers for influence. This is just an old,  
5 veteran man saying it is not what it was, but I think it changed the nature of  
6 political debate and the conduct of governance and opposition quite  
7 significantly in this country.

8 Rupert established a very strong hold here quite rapidly. His last big  
9 controversial act was with The Times, and, I may have said before, that was a  
10 highly controversial takeover. The Times was our objective newspaper of  
11 record in that old-fashioned, rather grand world that I recall, the age of  
12 deference and a different type of politics. That came to an end, and the then  
13 Minister, John Biffen – and I may have said this before – was deeply hostile to  
14 the idea of it, but I am afraid John – and he was a great friend of mine –  
15 allowed himself to be bullied by the then Prime Minister, Margaret Thatcher,  
16 who was thrilled with the idea that Murdoch was going to extend his influence  
17 to The Times and it went ahead and completed the big parts of his newspaper  
18 empire.

19 The one he used most to terrify the politicians was The Sun, which he used  
20 increasingly and which the new type of political advisers we acquired became  
21 convinced was the key organ that you had to have behind you if you were to  
22 win an election. I am not sure that I agree with all of the theories now  
23 expounded by these very expensive political advisers, but that was an article  
24 of faith on all sides of the political spectrum, so much so that at the time I was  
25 aware of the battles going on between Cameron and at first Tony Blair and

1 then Gordon Brown trying to seize the support of The Sun from the Labour  
2 Party to the Conservative Party in order to win in 2010. He would not have  
3 got it from Blair, I think, because Rupert was forever grateful to Blair for taking  
4 the attitude he took on the invasion of Iraq and thought he owed lasting  
5 favours for what he regarded as a brave decision; which I thought was  
6 disastrous, but that is irrelevant.

7 A colleague of mine, a very senior colleague, much closer to David than I  
8 was, I may have said last time, when I publicly was criticised in The Sun about  
9 something actually came up to me and said, "Do not criticise The Sun. You  
10 would not know what it cost us to get it". That led me when I became a  
11 Minister in the Cameron Cabinet to find Rebekah being introduced to me, in  
12 fact a meeting being arranged by the Prime Minister to see her in her rooms  
13 at Party conference, and she explained to me she was now running the  
14 government in partnership with David Cameron and gave me her list of  
15 recommendations as to what I should now be doing as Justice Secretary,  
16 which was one of the more peculiar conversations I have had in my life and  
17 which I regarded as rather amusing at the time, but it was an indication of  
18 where we were, as was Andy Coulson, regrettably so, Mr Murdoch's man in  
19 the government, attending all our Cabinet meetings and so on.

20 You are now talking about the possibility of adding the control of a major  
21 television station to that. This is not just like a light question of plurality, and  
22 the undertakings have to withstand all of that being extended permanently,  
23 because his acolytes and family I think have shown that they are not averse at  
24 all to the same approach to what it means to own a media empire.

25 Are the remedies that have been suggested sufficient to guarantee for future

1 generations that we have not made another marked shift by giving the same  
2 outfit control over a major television channel? Charlie, I thought,  
3 dismembered, when you look at the substance of what is offered, the rather  
4 lightweight notion that an editorial board would be consulted every now and  
5 again and would participate in the appointment of editors and so on.

6 Murdoch, in my opinion, has made it clear throughout his career by his  
7 behaviour that he does not employ editors whose politics he does not agree  
8 with. He never has, as every editor who has ever worked for him knows  
9 perfectly well. I do not know how often he actually intervenes. He used to  
10 come over here quite often – I do not know if he does so often as he did  
11 before – usually seeing the Prime Minister when he did; John Major was the  
12 last Prime Minister who resisted that kind of contact. As far as I know, he is  
13 still seeing the present Prime Minister via the back entrance into the garden  
14 gate into Downing Street, I think Tony saw him quite a bit, the editors just  
15 realise that their tenure depends on their being regarded as politically  
16 satisfactory in the influence they are exercising in their posts.

17 I will not go on. I did some of this before, but there is a reason I keep  
18 participating with my colleagues and Vince, who is not able to get here this  
19 afternoon, in all this, and it is not partisan; I think it is a very important feature  
20 of the present nature of political debate and the health of our democracy in  
21 this country, and I think the rule on plurality is very important. When you  
22 consider these remedies, given probably the Murdoch empire is led by people  
23 who regard all of this stuff as legalistic stuff they have to put up with as they  
24 acquire what they wish to acquire, you have to ask yourself: are these  
25 remedies of such substance we can rely upon them to protect future years

1 against the acquisition of Sky leading to a further concentration of power  
2 inside the media? I think it is quite obvious that they do not.

3 Q. Thank you very much. I think your views are very clear. As I am sure you will  
4 understand, we have a process we must go through, and what we wish to try  
5 to find is which of the remedy options that we have canvassed will effectively  
6 and comprehensively address our concerns in the most proportionate way.  
7 Those are the tests we have. We would like to go through all four of the  
8 remedy options that we have put in our notice and just have a discussion  
9 about pros and cons. You have made your position clear, but I want to unpick  
10 it a bit, and we are going to start with what we would call the firewall remedy.  
11 You have now seen the replies by Fox, and John will ask you a few detailed  
12 questions on that, but, just to start with, you have said you do not think that  
13 any behavioural remedy will do what we want, ie effectively, comprehensively  
14 address our concerns, but I would just like to unpick that a bit to sort of look at  
15 the key features. What are the actual key features any behavioural remedy  
16 would have to cover? Strategy, appointments, is there money -- can you just  
17 expand a bit, if we were going to have an effective behavioural remedy, on  
18 what the keys things are that you think it must cover?

19 A. (Mr Miliband) I think your own provisional findings provide you an absolutely  
20 brilliant template for this, because you have set out the five things -- and I  
21 think it is at least five things, because there is not an exhaustive list -- that it  
22 has to cover. You talk about the budget, you talk about the strategic direction  
23 of the business, you talk about the ability to secure synergies across Fox  
24 News's assets, you talk about the appointment of editorial positions, and then  
25 you talk about this thing about the clear expression of views of the members



1 of the Murdoch family directly to editorial staff. I think the point that both  
2 Charlie and I have made is that it is really important to understand the way  
3 that Murdoch exercises his influence, and I think it is less about telling people  
4 what to do in terms and is much more, as Lord Justice Leveson said, about  
5 people understanding where Murdoch is coming from and what is required.

6 I think the answer to your question is any behavioural remedy to be effective  
7 would have to answer all of these five points, because you yourself say:

8 "We note the increased influence by the MFT of a Sky News  
9 may not manifest itself in full control of editorial output and  
10 consider that any exercise of such influence is likely to be more  
11 indirect in practice [and then you go into those five points]."

12 Q. (Mr Tutton) Just one very quick point: one of the five bullet points is strategic,  
13 and you in a sense seem to take it as a given that targeting old people or  
14 switching more from rolling news to comment would be a bad thing. Is that  
15 what you are saying?

16 A. (Lord Falconer) No, what I am saying is the reason why these behavioural  
17 undertakings do not work is because 21<sup>st</sup> Century Fox will have a commercial  
18 strategy and the idea that you can separate a commercial strategy from an  
19 editorial strategy is absolutely for the birds. If 21<sup>st</sup> Century Fox thinks that  
20 money is to be made by old people being your main target, even though the  
21 Head of Sky News promises to have lots and lots of programmes for young  
22 people, he or she would quite legitimately, and not in any way having the  
23 content of what is being determined, inevitably have to follow the commercial  
24 strategy of 21<sup>st</sup> Century Fox. I focus on the commercial strategy to illustrate  
25 the unreality of saying you can put the Head of Sky News into a bubble of his

1 or her own.

2 A. (Mr Miliband) It is not for us to adjudicate on whether it is a good thing or a  
3 bad thing; it is for us to offer you our views on the question of control. Charlie  
4 was not opining on whether it was good or bad for Sky News to appeal to old  
5 people; he was opining on the fact that there is a coach and horses that can  
6 be driven through these undertakings at 1.8.2(a) in Allen & Overy's original  
7 letter to you. It says:

8 "The Head of Sky News will have sole responsibility for setting  
9 editorial strategy and direction."

10 But the point is if the commercial strategy is decided by Fox – and it will be,  
11 because Sky News is a part of Fox, and that was the point Charlie was  
12 making – it can absolutely determine the output of the channel.

13 A. (Mr Clarke) There is some kind of blurring here. When Richard Desmond  
14 acquired the Express, the new owners had to decide whether they were going  
15 to pro-European or Eurosceptic, and they did that for commercial reasons.  
16 They listened to arguments, but they were targeting the audience and the  
17 readership, they had to see what they were, and there were conversations  
18 between people; and perhaps the new ownership were listening to my  
19 arguments and then they were going off and talking to people who disagreed  
20 with me strongly and listened to their arguments. I was told by somebody at  
21 the Express that the decision was made that the commercial advantage –  
22 because that was the main interest of the new ownership – lay with targeting  
23 the Brexiteer audience they got and actually targeting it hard. That was how  
24 they were going to steal readers from the Mail and the Telegraph – that was  
25 their audience – commercially, and in my opinion they became ever more

1 zealot in doing that and probably kept the newspaper alive, because it was  
2 getting in a fairly bad way when they bought it.

3 Now, was that a commercial decision? In the end it merged. Was it a political  
4 decision? There is not this clear thing. Going back to the Iraq War, the then  
5 owners had said, "But we cannot be against the Iraq War. We will lose  
6 readership", because 70 per cent of the British public supported the invasion  
7 of Iraq at the time. You could not meet anybody six months later who  
8 remembered they had ever met anybody who held that view, but that was the  
9 public opinion in the opinion polls at the time. There is not this clear red line  
10 that this is a political decision and that is a commercial one.

11 THE CHAIR: I take your point, but we are not about restricting the commercial  
12 strategy. If they want to make Sky News more commercial, that is not part of  
13 our remit. You are concerned that the commercial strategy can effectively  
14 influence the editorial strategy. If the commercial strategy could be decided  
15 by the Sky News board or Head of Sky News, would that assuage your  
16 concern?

17 A. (Lord Falconer) It is totally unrealistic. The idea that, "We want a budget for  
18 five years for our strategy", which does not feed into the 21<sup>st</sup> Century Fox  
19 strategy, has no life to it. Let us take the second letter that they have sent in.  
20 "In five years' time we will determine what money you get." "We are running  
21 at the moment --" this is a hypothetical; I am the Head of Sky News. "It is  
22 aimed entirely at young people. It is aimed entirely at expanding our  
23 European coverage and our world coverage, because that is what young  
24 people are really interested in. I do a lot of hip-hop, and people are really  
25 interested in that. What they really want is rolling news; and there is 21<sup>st</sup>

1 Century Fox – and this is not a joke – rolling their eyeballs at this. You know  
2 they are rolling their eyeballs at this, and you know that in a year's time your  
3 budget is going to come up. You keep asking for more money for your  
4 correspondent in New Orleans, and every time it is said no to. It is just for the  
5 birds, is it not.

6 There are two other bits to this. Assume that the synergies will include all the  
7 central departments. 21<sup>st</sup> Century Fox's groups of lawyers, groups of budget  
8 controllers, groups of central departments who all merge with Sky News -- you  
9 have advice coming from the bosses in every area that is focused on their  
10 commercial strategy. Suppose the synergies also include saying, "By the  
11 way, we find comment is much more popular than rolling news". I am not  
12 saying it is a bad thing or a good thing, but where is the place that is making  
13 comment? Fox News. It is obvious that there should be synergies there as  
14 well. Are you intending to ban any synergies with Fox News? Are you  
15 intending that the head of Fox News should be able to have his own  
16 commercial strategy? It is just not possible, and that is because that is the  
17 nature of the legal and the commercial structure that will exist, assuming that  
18 you do not have a divestment and you do not have a carve out, which for  
19 separate reasons is impossible anyway.

20 Q. Just going back to the funding commitment, you said five years is not very  
21 much, but the Parties have put to us that actually five years in this fast-moving  
22 media world is actually pretty long and it is longer than any commercial  
23 contract, and if you look at the revised commitment that they have put in it is  
24 actually there is a commitment there for ten years with a review at the  
25 five-year point.

1 A. (Mr Miliband) Forgive me for interrupting, but there is no budget commitment  
2 for ten years; there is a budget commitment for five years, which is the same  
3 as in the original letter, and then there is, "We are going to have a look at it  
4 after five years". In a way, I actually think the revised letter they have sent  
5 you illustrates Charlie's point beautifully, because it basically says, "Yes,  
6 chums, we are going to be looking at this after five years. We, Fox, are the  
7 decision-maker". In those circumstances, if you were the Head of Sky News  
8 there is no question that you would be seeking to please your masters at Fox,  
9 because they will be determining your budget. They will be working out  
10 whether you can invest in news, whether you have to cut your investment in  
11 news, and that is the point about the power relationship which I made earlier,  
12 which was even true in the carve out but is particularly true here: the power  
13 rests with the people who hold the purse strings, and that is Fox.

14 Q. Would you expect them to give an open-ended, unlimited commitment to  
15 investment?

16 A. (Mr Miliband) This is why I think a behavioural remedy will not work. You  
17 actually canvassed whether it should be unlimited at least implicitly in your  
18 remedies notice, but this is the whole point: without it being unlimited – and it  
19 effectively might cease to be a behavioural remedy at that point – there is  
20 always going to be the power resting with Fox. That is why it is so hard to see  
21 the thing working, because - these are not our criteria, these are your criteria  
22 in paragraph 42. You say indirect influence is going to be exercised over the  
23 budget. I know I am not asking you questions, but, in a sense, my question  
24 back would be: it is you that identified that indirect influence comes from the  
25 budget; so, without an unlimited; in-perpetuity thing there is going to be

1 influence?

2 A. (Lord Falconer) The very fact of the absurdity of saying, "We promise to give  
3 funding at the same level for ever and ever until is absurd. Why is it absurd?  
4 (a) because who knows what is going to happen for ever and ever, but (b) no  
5 commercial company is going to spend money on something they do not want  
6 for any length of time, and the reason why they have the five-year break is, "If  
7 we do not like what we have, we will put as little as possible into it".

8 Q. Which of course it open to them to decide now.

9 A. (Lord Falconer) You are saying that it is open to them to do it now?

10 Q. To Sky now.

11 A. (Lord Falconer) Yes, but they do not do it now, because it promotes their  
12 brand.

13 A. (Mr Miliband) They do not have control.

14 Q. Why would that continue in the future?

15 A. (Lord Falconer) It will promote their brand depending on what their brand is.  
16 Suppose, "Fox News is our brand. We are aiming for the same audience as  
17 we are aiming for in Fox News. That is what the other 21<sup>st</sup> Century Fox -- as  
18 the films we make, the other channels --" it is quite difficult to imagine how the  
19 National Geographic channel is focused on people who watch Fox News, but,  
20 "We think the people who watch Fox News are the people who we are aiming  
21 at. We want to promote that --" you dealt with the question of culture in your  
22 report. You say it would never perhaps be as crude as Fox News, but, "What  
23 we want is Nigel Farage and Ken Clarke punching it out every evening on the  
24 telly --" which Ken would love to do, I know, and would do it brilliantly! "We  
25 want that kind of specific --"

1 A. (Mr Miliband) But also, let us return to the exam question here, which is that  
2 in your concerns about plurality you identify the danger of greater alignment,  
3 to use your words, between the editorial stance of the newspapers that Rupert  
4 Murdoch owns and Sky News, and the question is: is the indirect power or  
5 indirect influence – your words, in paragraph 42 – going to be exercised under  
6 these behavioural remedies? There is no question that the budgetary  
7 arrangements being proposed and any conceivable budgetary arrangement  
8 under behavioural remedies as was discussed is going to leave that power of  
9 indirect influence in the hands of Rupert Murdoch.

10 Q. Let us move on. John, you have a few more questions on the proposed  
11 remedy. We need to bottom this out.

12 Q. (Mr Krumins) Yes, if I can tease this out a little further, in your submissions to  
13 us you have previously given great weight to the protection that Sky News  
14 currently receives from its board and its independent directors, and so my  
15 starting question is that if an independent board were put in between Sky  
16 News and Sky - or Sky Fox - as it would become similar to Sky's current  
17 board, would that allay those concerns or would it then replicate what Sky  
18 News currently has as this independent-board layer between it and Fox and  
19 Sky and the influences of other ...?

20 A. (Mr Miliband) My answer is no, but my very specific point here is that the  
21 independent directors do not sit in a vacuum; they sit with 61 per cent  
22 ownership. That is the fundamental point here, and under this arrangement  
23 they would sit in a structure that is 100 per cent 21<sup>st</sup> Century Fox ownership.  
24 You in your report identify the extension of control that that gives to Fox.  
25 Fundamentally, that is why my answer is no.

1 A. (Mr Clarke) One of the things that worries me through all this, and we have  
2 not touched on it really yet, is what the enforceability is of any of these  
3 undertakings we are being given. They look desirable, and they are designed  
4 to, but a judgement would be required really in deciding whether they are  
5 being broken or not, and how would you enforce that? The suggestion that  
6 you try to replicate the present arrangement by having an independent board  
7 of which the majority therefore you trust will behave like the present  
8 shareholders. That is something that would have to ask if that was offered.  
9 Who is going to appoint? How independent are the people appointing those  
10 independent boards? Then the question is: are these really independent  
11 people? Say after a bit the independent board starts behaving in a slightly  
12 odd way or odd things happen. Let us say an editor gets sacked; someone is  
13 going to have to look at these undertakings. Was he sacked because he was  
14 incompetent, lazy or something or just not good enough, or was there some  
15 other motive? How on earth do you enforce an undertaking if you are  
16 convinced that actually your independent directors have gone along with  
17 sacking an editor who has not followed the approved political line of the  
18 empire or the organisation? You wish to challenge it; you say, "You have  
19 broken your undertakings". I have no idea what process would then be gone  
20 through. It would obviously be disputed. There would be some legal process  
21 you would have to go on. Are you going to threaten them with withdrawing  
22 their right to own it and all the rest of it? I would not have much confidence in  
23 all that. It would be throwing down a gauntlet and they would not bother to  
24 pick it up. We would not know how to pick it up if they sacked an editor.

25 A. (Mr Miliband) It is striking, despite essentially three goes at it, how



1 non-independent the independent board still appears to me in the following  
2 sense: that it is going to be appointed, as I understand it, by the so-called  
3 independent directors of Fox, who, you identify, as Charlie said in his opening,  
4 essentially do not remove the concerns about plurality. As I said, it is striking  
5 how they certainly do not appear independent.

6 Q. (Mr Krumins) The focus of my question was a blank sheet, an independent  
7 board: for example, you three gentlemen could be independent directors of  
8 Sky News. If you start from the premise that actually you three would not  
9 remain independent because you would come under the spell of Murdoch and  
10 act in his interest, then that is one position. Alternatively, we can take the  
11 view that you can find independent directors and if they are tasked with the  
12 appointment of the Sky News editor, that board is sufficiently large that it has  
13 a nominations committee and like any other board they will pick and select in  
14 that kind of fashion what mechanism will work. This is quite an important  
15 point. Either nobody can be independent, no matter what their pedigree is, or  
16 you can find independent directors and if they are given the rights, the  
17 governance and the freedom to make appointments that you select and then  
18 decide the commercial strategy and support the Sky News editor acting as a  
19 CEO. That is in effect separation. That is my question.

20 A. (Lord Falconer) My position in relation to this, and I think Ken and Ed would  
21 share this, is nobody can properly be independent. You are making a  
22 proposal that is not being made at the moment, as I understand it, by Allen &  
23 Overy. What you are suggesting is that there be a board between Sky News  
24 and Sky that runs Sky, and, as Ed said, 100 per cent of Sky is owned by 21<sup>st</sup>  
25 Century Fox. Obviously, 100 per cent of Sky News is owned by Sky. If I were

1 on the board along with Ed and Ken, I would see my duty as keeping Sky  
2 News alive. In order to do that, I would recognise that the only relationship  
3 that really mattered in relation to that was my relationship with 21<sup>st</sup> Century  
4 Fox, because they were providing me with money, they were providing me  
5 with the ability to continue, I was sharing premises with them and the future in  
6 terms of investment depended upon me getting money from them, and of  
7 course if Rupert, if I may call him that, though I am not on first-name terms,  
8 were to say, "I say, Charlie, would you mind just supporting the Iraq War?"  
9 Actually, I did support the Iraq War; so, I will have to take a different example!  
10 Suppose he said, "I say, Charlie, would you like to support the  
11 Conservatives?" say. I am sure I would be strong enough to say no to that,  
12 but the form of what was going on in Sky News would depend upon me all the  
13 time being able to have a sensible commercial relationship with MFT and 21<sup>st</sup>  
14 Century Fox. Look what Andrew Neil said in his evidence. He was never told  
15 he was fired. He was never told he had fallen out of favour. He just realised  
16 that once Rupert did not like him any more he did not get budgets through.  
17 He could not make progress. He could not develop.

18 A. (Mr Miliband) And, additional to that, pressure from below; the problem is the  
19 people in the organisation would know who the ultimate master was. The  
20 ultimate master would not be the board of us three. The ultimate master is  
21 Rupert Murdoch because he is 100 per cent owner of Sky News.

22 A. (Mr Clarke) You cannot give an absolute answer. You may find some  
23 paragons of virtue. You may find some independent people who are really  
24 robust. But it would be a bit of a chance. I would not envy the task of the  
25 people choosing these independent directors. All of the pressures that have

1        been referred to by my friends here would of course be brought upon them by  
2        the 100 per cent owners. It is rather like non-executive directors in corporate  
3        boards. You sometimes get very tough, very involved ones who are prepared  
4        to put their foot down, and you sometimes get completely useless ones, you  
5        get wet ones and so on. It would be very nice if you could replicate the  
6        present situation, but I would not rely on it, and how on earth you would be  
7        sure you could deliver it -- and if you find you have gone wrong and they are  
8        actually left bending in the wind, there is not much you can do.

9        This is what happened to the Leveson Inquiry. The Leveson Inquiry was  
10       going to put Murdoch and all of the others under the control of a totally  
11       independent press regulator after making -- and this has already been quoted  
12       -- some very strong findings about this huge organisation riddled with  
13       criminality and the way it was dominated by the centre. Here we are, five  
14       years later, and a government-appointed independent regulator has not  
15       happened at all. They have appointed one of their own for the time being.  
16       These have to be very good remedies if we are going to stop this kind of thing  
17       happening.

18    Q.    (Mr Krumins) When you look at the BBC or Channel 4 they are both  
19       organisations that have a separate board, but all of their directors have a  
20       good commercial relationship with the government and that is the way they  
21       think about their jobs in terms of governance of those organisations, and  
22       similarly all of the utilities - all have four or five finance cycles, they all have  
23       independent boards sitting over them, and that is a fairly common structure,  
24       because you cannot give so long to give complete freedom and there is a  
25       trade-off around that. It seems to work in those scenarios.

1 A. (Mr Miliband) Your report is excellent on this, if I may say so, because you  
2 talk about BBC and Channel 4 and you go through this in some detail, as you  
3 know, and you talk about the different character of those organisations.  
4 Those are public organisations. They do not have a private owner. There is a  
5 total distinction there, and you are absolutely clear about that in your report.

6 Q. (Mr Krumins) But the funding models are the same.

7 A. (Lord Falconer) No, the funding is not the same. The three of us are the  
8 paragons of independent directors. We are looking up not to the public and  
9 the citizens with the BBC. "We have just appointed Charlie Falconer's auntie  
10 to be the Director General because they liked him": you would get absolutely  
11 killed if you did that politically. However, if we, the executive directors, are  
12 looking for the shareholders, which is Murdoch -- he is the person who would  
13 be accountable. It is a completely different situation. For example, suppose  
14 that Murdoch were to say to us, "Look, I do not know if you know my son  
15 James. He is a most excellent fellow. Why do you not make him the chief  
16 executive, and in exchange for that you will get lots of investment?" It will not  
17 be the public who will dismember us; it would be Murdoch who would. Of  
18 course, I would not, because I am a splendid fellow! But most people would  
19 have to make a judgement about what is in the interests of Sky News. Your  
20 analogy with respect to the BBC is completely flawed. The questions are  
21 completely different.

22 You have also referred to non-executive directors. Maybe Ed or Anne did; I  
23 cannot remember which. But the non-executive directors' audience is the  
24 shareholders, and they are in very many cases a disparate group who will  
25 require high standards. For us, the independent directors, in your

hypothetical, it is Murdoch.

A. (Mr Clarke) I share your opinions, but the BBC is a completely one-off institution. It always has to withstand pressure. The hardline politicians on both sides are always convinced that it is hopelessly biased against them – they practically replicate each other in attacking it – and quite often governments in power have a go at the BBC and try to appoint a Director General who might shift it a bit and all this kind of thing, or they will start squeezing the budget, whatever it happens to be. The BBC is a strange institution whose whole ethos and whole culture is dedicated to resisting all of that stuff, with immense public support; it is second probably only to the National Health Service as a revered national institution and so happily beats off the kind of pressures it is open to. I just cannot imagine for one moment how you could replicate anything remotely as fireproof as that when it gets down to a subsidiary of Fox.

A. (Mr Miliband) I have found the reference. I was thinking of 10.100 on its role, that:

“The BBC is unique based on the way it is governed and funded. This means that the BBC is under particular pressure to provide impartial and balanced news coverage. Further, unlike the MFT, the BBC does not control any newspapers.”

You set out in a lot of detail the difference with the BBC.

Q. (Mr Krumins) You refer to 1981. The Times, clearly, is a newspaper. It has been put to us that television is actually very, very different. In a newspaper situation you can have one journalist or one editor, they can write a piece and that will appear, whereas TV has been posited to us as a team game; that is,

1 a group have to get together to produce television, the one individual does not  
2 have anything like the same degree of influence as to what happens in that  
3 kind of environment, and so consequently the issues that people have  
4 suggested to us in relation to newspapers are not the same when it comes to  
5 the ability to control or direct television in that situation. I would be interested  
6 to hear your positions on that.

7 A. (Mr Clarke) Yes, there is not an editor in the morning who can determine the  
8 whole thing, but the leadership and ethos that is necessary for the team and  
9 the presenters they have fronting the production and so on and the style they  
10 adopt is very different. I just think you have to look at Sky News and Fox  
11 News. Until recently you could watch Fox News here. There is a total  
12 contrast, an absolute contrast, from the point of view of a television  
13 programme. The ethos of them is quite apart from the political views or bias.  
14 In a newspaper you probably could, as you say, put that down to one man:  
15 that is, Fred Smith, who is the editor, or the proprietor who has put Fred Smith  
16 in. But if you control a television programme you would have to put people in  
17 and exercise influence over presenters going, new presenters coming in,  
18 formats and things, dressing it up as a commercial decision sometimes, that  
19 the brutal discussions that Fox so likes are more suitable, particularly if you  
20 have the right people on and that kind of thing. But the influence can still be  
21 applied. I think Fox News in America exemplifies only too clearly about what  
22 can be done, if you have a view about what sort of programmes you want.

23 A. (Mr Miliband) Can I just add to that, that Roger Ailes is the answer to that.  
24 There is no question about the impact that Roger Ailes, one man, had not only  
25 on Fox News but on political debate. I just do not agree with the premise of

1 your question. If the premise of your question were right, then the whole  
2 paraphernalia that Fox are pretending is going to be built around the Head of  
3 Sky News would not be necessary, because it would not be about one  
4 person, but it clearly is about one person. John Ryley has clearly played an  
5 important role at Sky News, and the power vested in the Head of Sky News is  
6 going to be very, very significant. Just look at the Roger Ailes example.

7 Q. (Mr Krumins) But that is exactly the premise of my question. In Fox News  
8 you have an organisation, to Ken's point, that was built ground up by Ailes  
9 around a culture, and every single person was selected and appointed to fit  
10 into that vision of what was wanted and how it would work. We have a very  
11 different situation here. Sky News is already up and running, with an  
12 established longstanding degree of personnel, and, Ken, as you pointed out,  
13 you have to change a lot of people, all the appointments as they flow through,  
14 to get the degree of significance of repositioning to anything like Fox News. It  
15 is not what somebody can do by inference or knowing what the editor wants  
16 to have a broad sweeping change across the full parameter; we are talking  
17 about very much hands-on control there. In the context of how you categorise  
18 an independent board and the role of Sky News, do you really have a fear that  
19 under that kind of remit the degree of change that you have posited as  
20 necessary to realign a news channel could be achieved in that way?

21 A. (Lord Falconer) You answer your own question in your provisional findings.  
22 You have said, 8.19:

23 "We recognise that the current culture at Sky News, which has  
24 been shaped by its operation as an independent unit with  
25 limited board-level involvement, may act as a constraint on the

1 ability of the MFT to take the first control in the short term.  
2 However, we provisionally consider that there is no inherent  
3 reason for such a culture to persist and that it could be  
4 changed over time with changes in key personnel [which would  
5 be exactly what you would expect].”

6 Q. (Mr Krumins) Sorry, the way I asked the question was: if you then have an  
7 independent board or some kind of layer that provides the resistance or the  
8 restriction to that degree of significant change, would that assist that or not? I  
9 agree, if there is nothing in between and if somebody is coming in on day one  
10 with a complete carte blanche ability to change everything, then yes, you can  
11 move those things around.

12 A. (Lord Falconer) I think the effect of what you are saying and what we see in  
13 places like Fox News or Russia Today is that it is the direction that matters.  
14 One or two key personnel can do it. The proposals that are being made  
15 involve the key appointment, the Head of Sky News, being made in effect by  
16 21<sup>st</sup> Century Fox. We are not talking about the editorial board that Allen &  
17 Overy are suggesting; we are talking about this board that you are  
18 suggesting, not that they are suggesting. Would that, which is completely  
19 dependent on the shareholders, which means it is completely dependent upon  
20 21<sup>st</sup> Century Fox, resist? In my respectful submission, obviously not, because  
21 you have the bottom wanting to make this change and you have the top  
22 wanting to make this change. The proof of the pudding is in the eating. Look  
23 at 1981. I do not know if you remember, but the most splendiferous people  
24 were made --

25 A. (Mr Miliband) Mr Krumins is younger than you!



1 A. (Lord Falconer) Yes, by a very considerable amount! Seriously, they put  
2 independent people of the highest quality – Sir Edward Pickering -- I cannot  
3 remember why he was of the highest quality! But it was people of the highest  
4 quality and other people, and it made no difference at all. Your proposal,  
5 which is not being put, I keep emphasising, by Allen & Overy, is you have  
6 these independent directors running Sky News completely in a vacuum  
7 against the wishes of the commercial strategy of 21<sup>st</sup> Century Fox and against  
8 the future career paths of the people working in Sky News.

9 A. (Mr Miliband) While all the time dependent on Fox for the budget.

10 A. (Lord Falconer) Exactly.

11 Q. (Mr Krumins) I think there are a number of elements, but, to be clear, what  
12 Fox have presented and what we ultimately conclude or recommend are  
13 different elements.

14 A. (Mr Miliband) Sure.

15 Q. (Mr Krumins) Again, your last comment seemed to assume that the Sky  
16 News editor would be appointed by Fox. We did not say that. That could be  
17 an appointment of the board, however constructed, which is very different  
18 from 1981. In 1981 that board did not have the power to appoint the editor.

19 A. (Lord Falconer) The independent directors had to approve both the  
20 appointment of the editor and the dismissal of the editor. It is very significant  
21 that they, 21<sup>st</sup> Century Fox, are not suggesting any of this, because it  
22 indicates what their ambitions are in relation to Sky News, and obviously they  
23 do not want prohibition, you should be very wary as an organisation in saying,  
24 “We are going to lay down different arrangements to the ones that you want”.

25 A. (Mr Miliband) I think we should be open with Mr Krumins, because it is clear if

1 you are asking us do we believe that the structural position in relation to any  
2 behavioural remedies because of the budget, because of the ownership,  
3 because of the unspoken power, means that these behavioural remedies  
4 cannot work; yes, we think they cannot work. We are clear about that, and,  
5 just going back to the now infamous paragraph 42, paragraph 42 is the Bible  
6 on this, because it tells you how that control and influence is going to be  
7 exerted.

8 A. (Mr Clarke) It is unlikely to work. If you were to acquire the right people  
9 emerging -- and it is difficult to be absolutely certain, but I think you would  
10 need some pretty tough, remarkable people to maintain it for very long. It  
11 may be a poor analogy, but the old press regulator -- I cannot remember what  
12 it was called now.

13 A. (Mr Miliband) The PCC.

14 A. (Mr Clarke) Some very, very good people were appointed to that, and they  
15 were undoubtedly independent. They were meant to withstand all the  
16 pressures being put upon them by people who thought they were being fussy  
17 in protecting people and not good for circulation and all that. I did share the  
18 general view that it actually had not worked and was all a bit of a sop, and not  
19 because they had been weak or perverse all the time or I thought I could have  
20 done any better or anything of that kind, but in practice it had not worked,  
21 because they were wholly dependent on the people who appointed them and  
22 the people who set them up anyway. The power of the great men of the  
23 press, press barons, editors and proprietors really made it a quite inadequate  
24 protection, which is why Leveson wanted to sweep it all away and have a truly  
25 independent one. Who knows, one day we may get there.

1 Q. (Mr Krumins) Okay. Perhaps Tim will take over now on the structural  
2 remedies.

3 THE CHAIR: Yes, we have to move on. We set out four remedies in our notice,  
4 looking at the spin-off or divestiture.

5 Q. (Mr Tutton) You have made your overall position on these clear, but, if we  
6 can just tease out the nuance here rather than the conclusion, we have  
7 already found that the Murdochs have a material influence over Sky; in the  
8 carve out scenario there would be independent shareholders, and there would  
9 be a degree of separation that in a sense does not exist now. Regardless of  
10 whether you regard the carve out as meeting the concerns that we have  
11 identified and that you have, is it any worse or better than the current  
12 position?

13 A. (Lord Falconer) It is worse, because you have Sky 100 per cent owned by  
14 21<sup>st</sup> Century Fox, so you have to have deals with 21<sup>st</sup> Century Fox to survive.  
15 That is not about the shareholding; that is about the fact that you are  
16 completely dependent upon 21<sup>st</sup> Century Fox if you are a Sky that is owned  
17 100 per cent by 21<sup>st</sup> Century Fox. It is fundamentally different to the current  
18 position.

19 I have also not fully understood how this is supposed to work. As I  
20 understand it, 39 per cent of the company Sky News, a PLC, would be owned  
21 by 21<sup>st</sup> Century Fox and 61 per cent would be owned by “the market” or other  
22 shareholders. You envisage that 61 per cent of people in the marketplace are  
23 willing to buy into a loss-making company completely dependent upon 21<sup>st</sup>  
24 Century Fox for its existence. 21<sup>st</sup> Century Fox, by the budget arrangements  
25 it makes, will determine what dividend, if any, is paid and what capital uplift or

1 not there is. Who are these shareholders that you have in mind who are  
2 going to buy the 61 per cent in this company?

3 THE CHAIR: You could start with the 61 per cent of the current 61 per cent.

4 A. (Lord Falconer) Yes, but they decide. Who is it up to?

5 A. (Mr Miliband) In any case, the fundamental point is the dependency  
6 relationship is very different from now because it is not 61 per cent of the  
7 whole company owned by the independents, it is 100 per cent of Sky owned  
8 by 21<sup>st</sup> Century Fox with a little minnow carve out.

9 Q. (Mr Tutton) Moving on to divestiture, there are two levels here. One is you  
10 doubt whether it could be sold and, secondly, there is a question of if it could  
11 be sold, what would one be looking for in a buyer. Let us go through the  
12 thought experiment, even if you regard this as problematic in all sorts of ways.  
13 The first question, are you saying you could not structure a deal which would  
14 make Sky News sellable?

15 A. (Lord Falconer) If you are thinking of selling Sky News to a completely  
16 different third party and 100 per cent of Sky News goes to a complete third  
17 party, we could envisage circumstances where that could work. I am not  
18 saying it is practical but that is a very different situation from the one that we  
19 are talking about. There would need to be undertakings from Sky News not to  
20 immediately open up its own news channel because that would immediately  
21 fall foul of the precise plurality problems that we have identified. But I would  
22 envisage that in this what I would regard as a madly hypothetical, heretical  
23 world, if there was to be a new and completely independent Sky News where,  
24 I do not know, Mother Teresa and a number of other people got together to  
25 buy Sky News as a service to the nation, yes. If it was completely

1 independent and had no connection with Murdoch, then the plurality  
2 arguments would fall away.

3 A. (Mr Miliband) But there is a problem when you start to think about it, because  
4 what are people actually buying? They are buying a brand which is  
5 dependent on Sky because it is called Sky News. They are presumably  
6 dependent on the facilities and resources because that is where they are  
7 operating from. They would also have to satisfy the conditions that you would  
8 have around plurality and any other concerns that take place. When you stop  
9 to think about whether there would be a buyer, whether there would be an  
10 appropriate buyer, it seems pretty implausible to us, plus the worry that we set  
11 out in our submission and Charlie draws attention to, which is - what is to stop  
12 Rupert Murdoch opening a new Sky News or some other channel?

13 Q. (Mr Tutton) I want to draw a distinction because your position on the  
14 behavioural remedies is they could not work. There is no set of behavioural  
15 remedies which could work.

16 A. (Mr Miliband) Sure, sure.

17 Q. (Mr Tutton) Whereas I think your position is slightly different on divestiture; it  
18 is you cannot see how it would work, you cannot see how a suitable buyer  
19 could be found who could run it as a standalone entity. In a sense, it is a  
20 slightly different argument.

21 A. (Mr Clarke) Firstly, I think potentially you might find a buyer because the  
22 world is full of rich powerful men who might be tempted by the idea, whether it  
23 makes money or not, of buying a major media outlet. Either you buy a football  
24 club or you could buy a newspaper. There are such managers. And then, on  
25 the face of it, that would solve the diversity problem. The guy would have to

1 be extremely well-advised to cover all the points that Ed and Charlie are  
2 making. His lawyers would say we need some absolutely unbreakable  
3 undertakings from Sky that they are not going to withdraw facilities. We can  
4 use their brand name and all the rest of it. But you never know. Rich,  
5 powerful people can hire lawyers who can get a proper deal.

6 What would actually worry me, apart from the unlikelihood of all this, is sitting  
7 around waiting to see if it would happen because what I can see happening is  
8 21<sup>st</sup> Century Fox signing up to trying to divest it and then, in two years' time,  
9 coming back and saying we have been trying frightfully hard to find somebody  
10 to buy it. That is going on in other areas now with people who must divest in  
11 Europe. One of the banks has been ordered to divest one of its subsidiaries.  
12 It has gone absolutely nowhere.

13 THE CHAIR: It cannot be RBS, can it?

14 A. (Mr Clarke) That is a quite recent example of it.

15 Q. It is RBS.

16 A. (Mr Clarke) That is what I would like. Quite apart from I agree with the  
17 unlikelihood. I am just postulating my rather fanciful view. We have had  
18 people emerge and buy newspapers on that ground. They want to spend  
19 money on something and if you have got that energy and you want to  
20 suddenly go into media and politics, fine. But I think you could be sitting  
21 around for years.

22 Q. It is open to us to specify there must be an upfront buyer.

23 A. (Lord Falconer) With respect, we are in a completely hypothetical realm here  
24 but there would be plurality issues. I am saying if it was a proper divestment,  
25 would you not need to see what the form of the relationship between the

1 buyer and the seller was in relation to that. There would then be issues as to  
2 whether or not -- because it would involve the structure of a licence,  
3 presumably. Then you would go straight back into all of the media plurality  
4 issues, potentially.

5 Q. It depends who they are.

6 Q. (Mr Tutton) But in principle if you had, to pluck a name out of the air who is  
7 slightly relevant, a Jeff Bezos-type character who was prepared to step in and  
8 buy it and either set it up completely independently without any of the issues  
9 of using existing resources. It is just a thought experiment at least.

10 A. (Lord Falconer) I take that point as well. It is a very interesting one. You  
11 would, first of all, exactly as you say, need to work out what was the  
12 relationship between Sky and the buyer, and you would need to work out  
13 whether that worked or not, and that will be dealt with presumably by the  
14 same process that we have gone through right from the outset. That is the  
15 starting point.

16 Secondly, and separately, you would then presumably need to ask yourself if  
17 we transfer it to Jeff Bezos, what is the effect on plurality there, which is an  
18 issue entirely separate on the relationship with Sky and Murdoch.

19 A. (Mr Miliband) Thirdly, surely you would have to ask also what does the full  
20 control of Sky buy on the part of 21<sup>st</sup> Century Fox - control of the Sky platform,  
21 all of that, due to his ability, Murdoch's ability, to set up a new channel and  
22 what would that mean for plurality because that must be a conceivable world.

23 A. (Mr Clarke) Any purchaser would have to get some absolutely firm  
24 guarantees that they are not simply going to go away and open a competitor.  
25 When you buy a company, you quite often do that.

1 Q. (Mr Tutton) They would have to get a licence.

2 A. (Mr Clarke) Sorry?

3 Q. (Mr Tutton) They would have to get a licence.

4 A. (Mr Clarke) And they would have to get a licence.

5 A. (Mr Miliband) Not on the ground of plurality, correct?

6 A. (Mr Clarke) You could not be refused a licence but they have to apply for a

7 new one simply to protect the purchaser.

8 A. (Lord Falconer) You could not be refused a licence. I think the position would

9 be who would have to get the new licence. That would depend, would it not,

10 on the terms of the deal? Suppose the position were that Sky News, without

11 the licence, in some way travelled, subject to merger control, to Jeff Bezos in

12 your thought experiment. Assume then that Mr Murdoch wanted to open a

13 Sky News 2, then he would have to apply for a licence to Ofcom but Ofcom

14 would not be troubled by the pluralities.

15 You do not want a situation where Bezos owns Sky News. He, Mr Murdoch,

16 has sold it in such a way that it is absolutely separate altogether from

17 Murdoch, so no Murdoch influence. He, Mr Murdoch, then gets the licence

18 from Ofcom, whereupon all the plurality concerns arise again because he,

19 with Sky News 2, has too much control. It is not just that Sky News is an

20 independent voice; it is also that Murdoch himself controls too much.

21 THE CHAIR: I think we can speculate on this one for some time but we have

22 probably gone as far as we can.

23 Q. (Mr Land) Until Mr Bezos comes along, that is probably about as far as we

24 can take it for now.

25 THE CHAIR: Exactly.



1 A. (Mr Clarke) A Chinese billionaire will turn up tomorrow.

2 Q. We will just see what happens.

3 Q. (Ms Chambers) We can now move on to prohibition of the deal. You have  
4 made it very clear that you believe that this is the only remedy that is both  
5 comprehensive and is effective. As you know, it has been put to us that if we  
6 do prohibit the deal there is a risk that Sky might close down Sky News. You  
7 have said very clearly in your submission that you think the risk of that, I think  
8 you used the phrase, "Vanishingly unlikely". Can I just put yourself into the  
9 position of those independent directors who are right now, and quite rightly,  
10 acting in the interests of the 61 per cent shareholders who are not Fox who, in  
11 the event of prohibition, may be faced with this choice which is: if we do not  
12 close down Sky News, we will never get a deal through which we can see, at  
13 the moment, is giving us a huge premium on the value of their shares that  
14 they are being offered as shareholders, so it is in their immediate financial  
15 interests to say yes. But we can see, with prohibition, it is not going to work.  
16 So, why would it not be in the interests of the independent directors to actually  
17 suggest that actually maybe we should close down Sky News? It is making a  
18 loss and it is also preventing you, those shareholders who we are supposed  
19 to be acting in the interests of, we are preventing you from taking this huge  
20 premium.

21 A. (Lord Falconer) Answer number one: all the evidence you have got in the  
22 course of the hearing was that Sky News added to the brand value.  
23 Secondly, that is consistent with the price that people are willing to pay.  
24 Thirdly, it is consistent with the way that Disney operated. All a prohibition  
25 would do is prevent a sale of the 61 per cent to Murdoch. It would not prevent

1 a sale of the 61 per cent to anybody else and the Disney deal indicates that  
2 there are other buyers out there and the Sky News brand has not prevented  
3 that. Indeed, it has almost certainly contributed to the value because Sky  
4 News is a valuable brand, not because it makes money but because it  
5 promotes the whole Sky platform.

6 A. (Mr Miliband) I think Charles put it very well but I think it is also illuminating. I  
7 believe I am right in saying in the first submission you received from Sky there  
8 was no mention of the idea of Sky News being closed. It was not on the cards  
9 at all. Then suddenly this idea arose. It quite evolves from the testimony you  
10 received from the Sky independent directors. It is quite at odds with the  
11 testimony received, I think, from one of the independent directors at Fox. I  
12 think they are attempting to threaten you.

13 A. (Lord Falconer) You are putting it quite legitimately on a commercial basis.  
14 You have read this, I know, but imagine if Sky derives brand value from  
15 operating a trusted, independent 24-hour news organisation. Sky News is an  
16 important --

17 A. (Mr Miliband) Who said that?

18 A. (Lord Falconer) CMA said it.

19 A. (Mr Miliband) Yes, yes.

20 A. (Lord Falconer) Sky News is an important part of Sky's offering. It contributes  
21 to Sky's reputation. It is what Sky said and that is Sky, in effect, the directors  
22 of Sky:

23 "Sky News is an important part of Sky's offering. It contributes  
24 to Sky's reputation as a high quality broadcaster. This explains  
25 why Sky continues to invest in Sky News and the costs of

1 running a 24-hour news organisation are material and outweigh  
2 the direct revenues it generates."

3 Your hypothesis, legitimately put to us, is that they, the directors of Sky, would  
4 close down something that enhances their value. Remember, the only people  
5 they cannot sell to, which means they cannot sell from the prohibition, is  
6 Murdoch. Everybody else they can.

7 A. (Mr Miliband) Well, not everybody else.

8 Q. (Ms Chambers) I suppose what I want to say, other things being equal, in the  
9 absence of the deal and the threat to prohibit the deal, they say that Sky  
10 News enhances Sky's value.

11 A. (Lord Falconer) Yes.

12 Q. (Ms Chambers) But when the choice is put before them that it would stop the  
13 whole of the Fox/Sky deal, which is infinitely bigger than Sky News -- I think  
14 you said that Sky News is a pimple on the elephant that is Sky and it is rather  
15 a nice pimple but it is still a pimple in financial terms -- would they not change  
16 their minds? Is there not a rational, financial reason why they might change  
17 their minds?

18 A. (Lord Falconer) There is not a rational, financial reason. Sky News, on the  
19 basis of the evidence they put to you, increases their value. The only problem  
20 they have got is with Murdoch. Why, having been prohibited from selling to  
21 Murdoch, would they then take steps to reduce the value of Sky?

22 A. (Mr Clarke) The Disney option shows there are alternatives that could  
23 emerge, are there not, really. They would lose their premium, if there is a  
24 particularly big premium, on the question of 21<sup>st</sup> Century Fox but that is for the  
25 shareholders and the board. But it would be rather perverse for either

1 21<sup>st</sup> Century Fox or independent shareholders to say, "Oh, blow this. We are  
2 calling the whole thing off because it will cause great damage to any potential  
3 buyer".

4 A. (Mr Miliband) I think it is a rather relevant point. I believe I am right, and so  
5 correct me if I am wrong, but the current offer price is below the current share  
6 price, the offer price that was made for Sky shares. So, I do not quite see  
7 what premium.

8 Q. (Ms Chambers) It depends what the share price is currently depending on in  
9 terms of what the expectations are.

10 A. (Mr Miliband) Understood, understood.

11 Q. (Mr Krumins) Let me just ask the question slightly differently. If we submit an  
12 offer that excluded or did not assume Sky News as part of the package,  
13 should the 61 per cent shareholders be given the opportunity to vote on it?

14 A. (Lord Falconer) Say it again.

15 Q. (Mr Krumins) You are supposing, I believe, this is what I want to understand,  
16 that Fox would not go through with the offer if it did not include Sky News  
17 because that was central to their perception of their deal and Disney's  
18 perception of their deal. If they wanted to go through with the deal without  
19 Sky News, should the 61 per cent shareholders be given the opportunity to  
20 vote on that?

21 A. (Lord Falconer) But that seems unlikely. It seems to me to be a means of  
22 trying to blackmail the CMA into agreeing to the transaction. What would  
23 happen to Sky News at that point? Why would they do that?

24 Q. (Mr Krumins) Presumably because it is the rest of the assets that they  
25 prioritise, they are still willing to offer a premium for that and it gives the

1 shareholders the decision as to how they wish to proceed.

2 A. (Lord Falconer) I think it will be unwise for the CMA to speculate as to what  
3 other ways it could be dealt with. It does not strike me as commercially  
4 consistent with the fact that Sky News adds value to Sky. I would be very,  
5 very suspicious of such an offer if it came forward because you would, in  
6 effect, have an opportunity -- well, you would not be picking up your notice but  
7 you are basically prohibited. If you have prohibited, let them decide what they  
8 do then. Do not speculate about what they might do in circumstances where  
9 they are not saying that.

10 A. (Mr Miliband) But also I think you put it very well in paragraph 17 of your  
11 remedies paper:

12 "We do not see why, [this is the CMA] based on our  
13 consideration, Sky would wish to close Sky News in the event  
14 of a decision by the Secretary of State to prohibit the  
15 transaction as the continued operation of Sky News would be  
16 unlikely to represent a last obstacle to the Disney/Fox  
17 transaction."

18 A. (Mr Clarke) I regard the risk of speculation quite slight but obviously this is a  
19 risk you have to consider really. I find myself asking, from a public interest  
20 point of view, which would be the worst of the two undesirable outcomes if I  
21 was given the alternative? For Sky to close or for Sky to go into the  
22 ownership of 21<sup>st</sup> Century Fox with no effective restraint on what they wish to  
23 do? Is the possibility of Mr Murdoch's stated desire to create Sky-Fox News  
24 actually likely to go ahead? This is a choice between undesirable options and  
25 my ideal would be to have a reasonably independent Sky television carrying

1 on. That is obviously what we are talking about here with diversity.

2 But I am not sure which could do the most damage because the existing  
3 dominant position, if you are doing a 21<sup>st</sup> Century Fox here, by giving a big  
4 opening into television, is very dangerous and one would hope, if Sky closed,  
5 that other television channels will strengthen their position to keep some  
6 diversity going. It, at least, would be freer of political influence which is quite a  
7 dominant one on so many newspapers, to which the television thing would be  
8 added.

9 Obviously the ideal thing, we are all saying, would be we would not want Sky  
10 to close. Nobody wants Sky to close. What you cannot have is the danger of  
11 Sky closing saying, "Well, there it is".

12 A. (Mr Miliband) Exactly.

13 A. (Mr Clarke) "There is a risk so we are going to have to let them have it." We  
14 are going to have to see what the Murdochs do with Sky News.

15 A. (Mr Miliband) Exactly.

16 A. (Mr Clarke) I have already given my strong opinion of what I think is likely to  
17 happen already.

18 Q. (Ms Chambers) The final question from me is about Disney. In the context of  
19 what you know at the moment about the Disney/Fox proposed deal, which is  
20 obviously a bit longer away in terms of time than the Fox/Sky deal, do you  
21 have any concerns about Disney acquiring Sky?

22 A. (Lord Falconer) I am not really clear in my own mind as to what influence  
23 MFT would have over Sky News once the deal has taken place. I am not  
24 clear about the new shareholding structure that there will be in relation to  
25 Disney and MFT. I am quite open-minded in relation to that. It looks like they

1 will have materially less influence than they have got at the moment over Sky  
2 News but I think one needs to see the final transaction.

3 I think a structure whereby that is possible to achieve is a prohibition now,  
4 with the ability, when they have got something to say about the Disney deal,  
5 to come back to the CMA and make an application to be appropriately lifted  
6 from prohibition.

7 A. (Mr Miliband) On the face of it, it seems like it raises much less plurality  
8 concerns than the current proposal because of the significantly reduced  
9 ownership that is being talked about. I think it is five per cent.

10 A. (Mr Roberts) Less than five per cent.

11 Q. (Ms Chambers) Is it entirely based on the low shareholding that your concern  
12 is alleviated or are there other aspects?

13 A. (Mr Miliband) Forgive me if it is not you that says this but I think clearly there  
14 may be issues about who is on the board, board representation, ownership  
15 and so on, which you have to look at in any lifting of a prohibition. That is why  
16 we felt that I think it was option B.

17 A. (Lord Falconer) It was 43B.

18 A. (Mr Miliband) Is it 43B?

19 A. (Lord Falconer) Yes.

20 A. (Mr Miliband) 43B of your two options, what should happen? So, not the  
21 sunset clause but the application clause.

22 THE CHAIR: Material change of circumstances.

23 A. (Mr Miliband) Material change of circumstances.

24 A. (Mr Clarke) I do not think anybody could stop it. We will just have to wait and  
25 see. The whole history of media ownership is really, if you look back, a series

1 of extraordinary, larger-than-life people with organisations turn up and take  
2 over sections of our media. I think if it was a Russian oligarch you would have  
3 to consult people to make sure he was a fit and proper person and so on but  
4 actually Disney, on the face of it, I mean I cannot believe anybody would  
5 knock Disney; they would not see quite what ground they were -- but Disney  
6 would have to meet broadcasting standards and all the rest of it. If they start  
7 behaving exotically, then you could all start agitating that perhaps you should  
8 do something about it. But, frankly, it would get us out of a present hole if --  
9 and the obvious desire, really, of 21<sup>st</sup> Century Fox to have more control over  
10 Sky News if somebody were to have a go at taking it over. I would not object  
11 to Disney, I have to say. I have no idea and I would not begin to try to guess  
12 what the effect five years down the road would be on the content of Sky but I  
13 would give them a go myself.

14 Q. (Mr Land) I think you have answered it. I just wanted to understand what  
15 your position is in terms of some sort of residual Murdoch family shareholding  
16 in some other company owning Fox, owning Sky. I think what I am hearing is  
17 that you could conceive of circumstances in which the Murdoch Family Trust  
18 had some shares in that company that would not give rise to concerns but you  
19 are not comfortable trying to specify what those would be.

20 A. (Mr Miliband) I do not think we can give a blank cheque in advance. It is not  
21 for us to give a cheque but I do not think we could say, in advance, yes. I  
22 think we would need to look at the circumstances, how big their ownership  
23 was, if there is an issue about the scale of shareholding they will have as  
24 against others and you have to weigh that alongside is there board  
25 representation. So, I think you need to look at the complete picture.



1 A. (Mr Clarke) Are they going to be given more control than they have now?  
2 That is the test. If the answer is yes ...

3 Q. (Mr Land) So, we have talked about hypothetical situations. You can  
4 envisage hypothetical situations where there would be some Murdoch  
5 shareholding in, indirectly, through down to Sky and Sky News but it is just  
6 helpful for us to understand.

7 A. (Mr Falconer) I do but that is the proposal that has been made. We are not  
8 committing ourselves but yes, in answer to your question.

9 There is just one other point and I do not know whether this is relevant. I  
10 wondered if Fox would be saying to you, "Well, look, we have got ten years  
11 now as opposed to the five years. That means we have somehow signed  
12 Disney up and, therefore, you should think about giving these behavioural  
13 undertakings". That would be awful if that is what they were saying because  
14 you should not be lured into these terribly bad behavioural remedies because  
15 of some alleged commitment that Disney may be making as to ten years or,  
16 indeed, to any undertakings.

17 THE CHAIR: To be clear, what will be put on the website is what they have put to  
18 us.

19 A. (Lord Falconer) Right, okay. This is my own laziness. I have not seen an  
20 account of the hearing on 14 February.

21 Q. No, the summary of the hearing has not yet.

22 A. (Lord Falconer) That was all. I do not know what they said on 14 February  
23 but they obviously had a conversation with you on 14 February and the  
24 outcome of that was the second letter. I do not know what they said. I was  
25 just speculating on that.

1 Q. A summary of the hearing will go up in due course but there is no side letter to  
2 this.

3 A. (Lord Falconer) No, I was just wondering. If they have not, then I need not  
4 trouble you with it.

5 Q. We have taken just over an hour and a half and we said we would be an hour  
6 and a half. Anybody else got questions? Is there anything else you would  
7 like to say? Yes.

8 A. (Lord Falconer) Yes, just very, very briefly. Broadcast standards: my concern  
9 about broadcast standards is this. Summarising your reasoning, you are  
10 saying the key evidence as to whether or not there would be the genuine  
11 commitment to broadcasting standards is the record of Sky and Fox in relation  
12 to UK standards although, to a lesser extent, foreign standards as well. The  
13 record of Sky and Fox, really apart from Fox News, is completely in relation to  
14 non-news and current affairs channels. There is some business news on  
15 some of them but, take it from me, that is not very significant.

16 The key broadcasting standards that are in play in this bid are news and  
17 current affairs and, in particular, issues of political salience. It seems to me  
18 that it is a wholly unsafe basis to say because they have complied with  
19 broadcasting standards in respect of the National Geographic channel, by  
20 way of example, that shows that you can trust them in relation to news and  
21 current affairs. That appears illogical and unsafe and legally flawed.

22 What we then say, in our submissions, what you have got to do is look at  
23 everything. That is a factor and it is significant in relation to the non-news and  
24 current affairs thing but it could not possibly be decisive in the way that you  
25 have effectively made it decisive. You have quite fairly said, "Our starting

1 point is they have complied in the past, so we need something to dislodge our  
2 opinion in relation to that" and then you go through various things and say,  
3 "That does not dislodge our opinion". You have weighted it, therefore, against  
4 them not having the genuine commitment.

5 I think the right way to do it is to look at everything without there being that  
6 weighting. We have listed, in our broadcasting standards written submission,  
7 what the five or six things are, like the undertaking in 1981, like the attitude of  
8 Murdoch to control, like the Leveson conclusions, like the fact that they do not  
9 like our regulatory system in the UK, like the way that they were oblivious to  
10 regulation in News Corp in relation to the hacking scandal and like the fact  
11 that in Fox News they have shown complete disregard for true governance in  
12 relation to sexual and racial harassment issues.

13 You should look at it on that basis and then conclude can we say that  
14 Murdoch, because that is the key person, has a genuine commitment to  
15 ensuring that his news channel will be impartial and will not pursue his  
16 political agenda. Really the idea that one can reach the conclusion that he  
17 would, because the National Geographic did not really offend that much  
18 against broadcasting standards, is not a plausible basis to reach that  
19 conclusion.

20 Q. Thank you.

21 A. (Lord Falconer) You were going to talk to me about it.

22 Q. As I said, we are not going to have a discussion on it. We have got it here  
23 and we are reading it all very carefully.

24 A. (Lord Falconer) Okay, that is fine.

25 Q. Which brings me to the next steps. So, thank you.

1 A. (Mr Miliband) Can I just say one thing, if we are finishing.

2 Q. Yes, of course.

3 A. (Mr Miliband) Just before we leave the issues of plurality, obviously thank you

4 for your time. The thing I would say as our closing remark is I think you have

5 produced a truly excellent report on plurality. I think it is comprehensive. I

6 think it is clear. I think it is absolutely objective. I think what we are saying is

7 have faith in that report and have faith in the threat to plurality that you

8 identified and carry through with that. I know we have referred to

9 paragraph 42 a lot but the reason we referred to it a lot is because it is so

10 clear about the mechanisms of the harm and the threat to plurality. I think that

11 if you follow the logic of what that paragraph says, I think it leads you

12 inexorably as the only reasonable course to prohibition of the deal.

13 Q. Thank you. Just very briefly on next steps, as you already expect we have

14 had a number of submissions pointing in different directions and we are going

15 to consider them all carefully. We have to make a final decision on the public

16 interest tests and, if appropriate, the remedies. The deadline for sending the

17 final report to the Secretary of State is 1 May. We do not publish the report

18 when we send it to the Secretary of State as it is for him to publish it and he

19 must publish it within 30 working days and will also make his final decision.

20 A. (Mr Clarke) He has to publish within 31 days, is it?

21 Q. Thirty working days, yes.

22 A. (Mr Clarke) Thirty working days.

23 Q. He has to make his decision within 30 working days.

24 A. (Mr Clarke) Does he have to publish it?

25 Q. Yes. He has to publish his decision and he has to publish our report but we

- 1 do not publish it.
- 2 A. (Mr Clarke) No, no.
- 3 Q. We will not be publishing at the end of it. Thank you all very much. That is
- 4 all, I think.
- 5 A. (Mr Miliband) Thank you very much for having us. Thank you.

### Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and didn't finish the sentence.
- xx xx xx -	A pair of single dashes are used to separate strong interruptions from the rest of the sentence e.g. An honest politician – if such a creature exists – would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way – or was there?