



HOUSE OF COMMONS

LONDON SW1A 0AA

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21st March 2018

Dear Sabrina

We are grateful to the Panel for its time and consideration at our hearing on February 21st. We write to follow up on a number of points, two of which relate to issues around the exercise of control by Fox under behavioural remedies, and one to the future of Sky News. On these points, additional information has emerged since we met.

Additional Information on Behavioural Remedies

At our hearing we drew attention to one of the key paragraphs in your report on the exercise of MFT control over Sky News post-takeover—paragraph 42 of your provisional findings. This listed five (non-exhaustive) ways in which “increased influence” might be exercised by the MFT.

The fourth of these mechanisms was around “the appointment of editorial positions within Sky”. When we met the CMA, the summary hearing with Fox and Sky of 14th February had not been published, and there remained a degree of opacity over the appointment of the Head of Sky News.

We note that paragraph 13 of the summary of your hearing with Sky, now published, states as follows: “Sky said that the process of the appointment of the Head of Sky News should be led by the CEO of the company [Sky] in an open way. Sky explained that the Editorial Board would have a role in reviewing and discussing a list of candidates, including any candidate(s) recommended by the CEO, and making a final approval.”¹

This is a significant statement because other statements made have tended to imply that the Editorial board will somehow be in charge of the process, not the Sky CEO.²

¹https://assets.publishing.service.gov.uk/media/5a9523fe40f0b67aa272514a/sky_response_hearing_summary.pdf

² In the summary of the evidence Fox gave to the CMA on February 14th, they summarised the process as follows: “The Sky News Board would be responsible for the process of recruitment, approval and appointment of a new Head of Sky News”

It seems clear from paragraph 13 that Sky envisages that its CEO, appointed by Fox, will be the person who leads the process and therefore recruits and chooses the successful candidate. The only guaranteed right for the Editorial Board is one of veto of a potential appointee, a nuclear option unlikely to be used. It is clear that the balance of power would therefore rest firmly with Sky and Fox, not the Editorial board.

This not only undermines the idea of the supposed 'insulation' of the Head of Sky News from influence by Sky and Fox under the proposed behavioural remedies but it also illustrates a challenge any behavioural remedy will find it very difficult to overcome. It is inevitable that Sky, as part of Fox, will wish to have significant influence for editorial but also for commercial reasons over the appointment of the Head of Sky News. The decisions made in this role will clearly be material to the financial position of Sky and significant for its wider brand.

The fifth of the mechanisms of potential MFT control set out in paragraph 42 was around the "clear expression of the views of the members of the Murdoch family directly to editorial staff, which could lead to influence over and changes to the editorial positioning and agenda of Sky News."

We discussed in our hearing the way the 'unspoken power' of the Murdochs was a crucial way they could influence editorial staff at Sky News post-takeover and we also pointed out in our letter to you of February 6th before our hearing that the MFT would be able to exercise influence through intermediaries: "Sky will also have a Chief Executive, appointed by the Board of Fox, to whom, it must be assumed, the Head of Sky News will report day to day on most issues."³

The summary of your hearing with Fox, now published, states at paragraph 8 "Day to day reporting by the Head of Sky News would remain with a senior executive at Sky, to ensure the Sky News Board was not burdensome on daily operations."⁴

As between an editorial Board that meets as little as twice a year, and a Sky CEO, or other senior executive, appointed by Fox, who will *in their own words* have "day to day" oversight of the Head of Sky News, it is again clear where real power will lie.

We believe this will give the MFT another conduit through which to influence programming and editorial strategy. Decisions which would be made at the level of the Fox Board could be operationalised through the relationship between the Sky CEO, or other senior executive, and the Head of News.

For example, decisions to move towards greater amounts of comment and less news to boost audiences or to appeal to particular sections of the population could be used as proxies to push a particular editorial agenda, such as a drive towards far greater

https://assets.publishing.service.gov.uk/media/5a9523bfe5274a5b849d3abc/fox_response_hearing_summary.pdf, paragraph 8.

³ Letter from Ed Miliband et al, 6th February, p.9

⁴https://assets.publishing.service.gov.uk/media/5a9523bfe5274a5b849d3abc/fox_response_hearing_summary.pdf

sensationalism, on the lines of Murdoch papers, or an emphasis on issues of interest to particular groups, such as immigration, again increasing alignment with the rest of the Murdoch empire.

We believe this shows once again, the difficulty of designing *any* effective behavioural remedies which are resistant to attempts by Fox to exercise influence over Sky News. In this context, we believe the CMA guidance on behavioural remedies is of particular relevance: "...It is essential that there are effective and adequately resourced arrangements in place for monitoring and enforcement so that there is a powerful threat that non-compliance will be detected and that action will be taken to enforce compliance where this is necessary." ⁵

It is inevitable that post-takeover, the Head of Sky News would have to interact with the CEO of Sky. This is not simply because the MFT wishes to exercise control but by virtue of the structural place of Sky News, as part of Sky, itself 100% owned by Fox.

In these circumstances, we do not see how it would be remotely practicable to create "effective and adequately resourced arrangements" for "monitoring and enforcement" of behavioural remedies, particularly as regards the complex network of relationships that will inevitably exist between the Head of Sky News and Sky executives post-takeover. Nor do we believe on the foregoing analysis that it is remotely credible that there could be a "powerful threat that non-compliance will be detected" given the difficulty of monitoring these conversations and interactions.

The Threat to Close Sky News

We also note that since our hearing, Comcast has launched a bid for Sky. We believe this further strengthens our case of the non-credibility of any threat to close Sky News should prohibition of the deal be the outcome in this case.

The CMA said in its remedies document that "We do not see why, based on our considerations, Sky would wish to close Sky News in the event of a decision by the Secretary of State to prohibit the Transaction as the continued operation of Sky News would be unlikely to represent an obstacle to the Disney/Fox transaction." ⁶

We believe this view is further strengthened by this latest bid. It would defy any shareholder logic to close Sky News in response to prohibition, given the other bids for Sky. It confirms that the CMA should approach this threat as a misjudged attempt to blackmail the CMA into allowing the bid to go through.

CMA Final Report

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510513/cc8.pdf, paragraph 4.3

⁶ CMA Notice of Possible remedies, https://assets.publishing.service.gov.uk/media/5a66d818ed915d266017b6a5/remedies_notice.pdf, paragraph 17

Finally, in relation to the CMA final report, it is worth emphasising the particular importance of there being a definitive and unambiguous recommendation. One of the unique aspects of the case, as was implied by the evidence, and your provisional findings, is that politicians are in a position of particular susceptibility in respect of media public interest cases because of the influence media owners have, or are perceived to have, over the fortunes of politicians and their parties. Hence the importance of a clear way forward, upon which the Secretary of State can base his decision.

We would urge the Panel to come to a clear finding in favour of prohibition, consistent with its powerful provisional findings.

Yours sincerely

Rt Hon Ed Miliband MP

Rt Hon Lord Falconer of Thoroton

Rt Hon Sir Vince Cable MP

Rt Hon Kenneth Clarke MP