

**Public Interest Decisions by the Secretary of State for Digital, Culture, Media and Sport on the proposed acquisition by 21st Century Fox, Inc of Sky plc dated 5 June 2018**

**PARTIES**

1. 21st Century Fox, Inc (“21CF”), a Delaware corporation whose shares are listed and traded on the NASDAQ Global Select Market.
2. Sky plc (“Sky”), a public company whose shares are listed and traded on the London Stock Exchange.

**TRANSACTION**

3. On 15 December 2016, 21CF announced its intention to acquire the fully diluted share capital of Sky not already owned by 21CF and its affiliates, increasing its existing shareholding from approximately 39% (“the proposed merger situation”).

**INTERVENTION DECISION**

4. On 16 March 2017, the then Secretary of State for Culture, Media and Sport issued a European intervention notice to the Competition and Markets Authority (“CMA”), pursuant to section 67 of the Enterprise Act 2002 (“the Act”), stating that she believed it was or may have been the case that the following public interest considerations contained in section 58(2C)(a) and (c) of the Act were relevant to a consideration of the proposed merger situation:
  - (a) the need, in relation to every different audience in the United Kingdom (UK), for there to be a sufficient plurality of persons with control of the media enterprises serving that audience (the “plurality ground”); and
  - (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (the “commitment to broadcasting standards ground”).
5. On the same date the Secretary of State requested the Office of Communications (“Ofcom”) to prepare an initial report pursuant to article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (“2003 Order”) on the effect of the proposed merger situation on the identified public interest considerations.

**REFERENCE DECISION**

6. Having received reports from the CMA and Ofcom pursuant to article 4 and article 4A respectively of the 2003 Order, and further clarification on specific points from Ofcom on 25 August and 4 September 2017, the then Secretary of State for Digital, Culture, Media and Sport announced on 20 September 2017 her decision to refer the transaction to the

CMA under article 5(3) of the 2003 Order in view of her belief that it was or may be the case that:

- (a) arrangements were in progress or contemplation which, if carried into effect, would result in the creation of a European relevant merger situation;
- (b) that the public interest considerations set out in sections 58(2C)(a) and (c) of the Act, namely the plurality ground and the commitment to broadcasting standards ground, were relevant to a consideration of the merger; and
- (c) taking account only of those public interest considerations, the creation of the proposed merger situation operates or may be expected to operate against the public interest.

## **JURISDICTION**

- 7. The Secretary of State for Digital, Culture, Media and Sport (“Secretary of State”) received the final report of the CMA, prepared in accordance with article 9 of the 2003 Order, on 1 May 2018 (“the CMA Report”). In accordance with article 12(2) of the 2003 Order, the Secretary of State must decide:
  - (2) whether arrangements are in progress or contemplation which if carried into effect, will result in the creation of a European relevant merger situation (article 12(5) of the 2003 Order provides that he shall accept the decision of the report of the CMA on this question); and
  - (3) if so, whether, taking account only of the public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

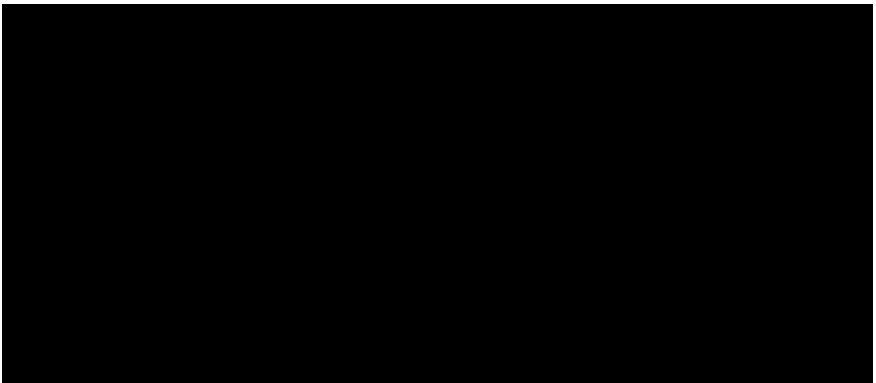
## **REPORT OF THE COMPETITION AND MARKETS AUTHORITY**

- 8. The CMA Report contains its decisions on the questions it was required to answer under article 6 of the 2003 Order, namely:
  - (2) whether arrangements are in progress or contemplation which if carried into effect, would result in the creation of a European relevant merger situation;
  - (3) if so, whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest; and
  - (4) if so, the following additional questions:
    - (a) whether action should be taken by the Secretary of State under article 12 of the 2003 Order for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the European relevant merger situation concerned;

- (b) whether the CMA should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the European relevant merger situation concerned; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

#### **DECISIONS UNDER ARTICLE 12 (PUBLIC INTEREST FINDINGS)**

9. In coming to his decisions, the Secretary of State has taken into account the report and appendices provided to him by the CMA.
10. In reaching his decision under article 12 of the 2003 Order, the Secretary of State, as required by article 12(5) of the 2003 Order, accepts the decision of the CMA that arrangements are in progress or contemplation which if carried into effect, will result in the creation of a European relevant merger situation.
11. The Secretary of State had decided that the plurality ground and the commitment to broadcasting standards ground are relevant to the merger, and that, taking account only of those public interest considerations, and for the reasons outlined at paragraphs 1 to 160 of the Summary of the CMA report, the proposed merger situation:
  - may be expected to operate against the public interest so far as concerns the plurality ground (the public interest consideration set out in section 58(2C)(a) of the Act); and
  - may not be expected to operate against the public interest so far as concerns the commitment to broadcasting standards grounds (the public interest consideration set out in section 58(2C)(c) of the Act).



An official of the Department for Digital, Culture, Media and Sport

5 June 2018