

# **Anticipated acquisition by 21st Century Fox, Inc of Sky Plc**

## **Appendices and Glossary**

Appendix A: Reference and conduct of the Inquiry

Appendix B: The regulation of broadcast media and the press in the UK

Appendix C: The Broadcasting Code

Appendix D: Background to the media plurality consideration

Appendix E: Online news

Appendix F: Sensitivity adjustments to share of reference

Appendix G: Age and social groups reached by news providers

Appendix H: News production

Appendix I: Agenda leading studies

Appendix J: News Corp's media ownership in Australia

Appendix K: Qualitative evidence on political influence

Appendix L: Breaches of the Broadcasting Code

Appendix M: Fox Revised Firewall remedy

Appendix N: Fox Ring-fencing remedy

Appendix O: Fox Divestiture remedy and indicative Divestiture timeline and steps

Appendix P: Sky net investment in Sky News

Appendix Q: Revised Firewall remedy assessment

Appendix R: Ring-fencing remedy assessment

Glossary

## Appendix A: Terms of reference and conduct of the Inquiry

### ANTICIPATED ACQUISITION BY TWENTY-FIRST CENTURY FOX, INC OF THE ENTIRE ISSUED AND TO BE ISSUED SHARE CAPITAL OF SKY PLC THAT IT DOES NOT ALREADY OWN

#### TERMS OF REFERENCE

The Secretary of State for Culture, Media and Sport issued a European intervention notice on 16 March 2017 in relation to a European relevant merger situation, as defined in section 68 of the Enterprise Act 2002 ("the Act"), and has received a report of the Competition and Markets Authority ("CMA") and of Ofcom under articles 4 and 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("the Order") in relation to the matter.

Whereas the Secretary of State for Digital, Culture, Media and Sport believes, as a result of the proposed acquisition by Twenty-First Century Fox, Inc. ("21CF") of the entire issued and to be issued share capital of Sky plc that 21CF does not already own, it is or may be the case that:

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation, in that:

- (i) two or more enterprises will cease to be distinct; and
- (ii) the value of the turnover in the United Kingdom of the enterprise to be taken over exceeds £70 million;
- (iii) a concentration with a Community dimension (within the meaning of Council Regulation (EC) No 139/2004), or a part of such a concentration, has thereby arisen or will thereby arise;
- (iv) a reference is prevented from being made under section 33 of the Act in relation to the relevant merger situation by virtue of Community law;

(b) the following public interest considerations specified in the European intervention notice are relevant to a consideration of the European relevant merger situation concerned:

- (i) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience; and
- (ii) 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 CA03; and

(c) taking account only of the relevant public interest considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

The Secretary of State for Digital, Culture, Media and Sport, in exercise of her powers under article 5(3) of the Order, hereby makes a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report on the questions referred to in articles 6(2), (3) and (4) of the Order within the period set down in article 9 of the Order.

**Rt Hon. Karen Bradley MP**  
**Secretary of State for Digital, Culture, Media and Sport**  
**20 September 2017**

## Conduct of the Inquiry

1. We published the [biographies of the members](#) of the Inquiry Group on 20 September 2017. The [administrative timetable](#) for the Inquiry was published on our [case page](#) on 27 September 2017 and updated on 6 December 2017. The administrative timetable was updated again on 23 January 2018 to account for an eight-week extension to the Inquiry.
2. We agreed the basis for which Ofcom would provide information and assistance to us, a [letter](#) detailing these working arrangements was published on the [case page](#). We sent Ofcom nine requests for information, which have been published on the [case page](#) along with any non-confidential responses. We received written evidence, in the form of initial submissions from the Parties and submissions from third parties and the Parties to Ofcom and the Secretary of State for Digital, Culture, Media and Sport during phase 1 of the Inquiry.
3. On 10 October 2017, we published an [issues statement](#) on our case page, setting out the areas of concern on which the Inquiry would focus. We invited all interested parties to comment on the Transaction. We published an [information page](#) linked to via the case page setting out how and when contributions to the Inquiry could be made. We received nearly 12,500 written submissions to our issues statement. Thirty-six of these submissions were substantive and were published on the case page (including submissions from the Parties). A further three submissions received were marked as confidential; a [summary of the confidential submissions](#) is also available on the case page. A [summary of the submissions](#) which were not published was also published on the case page.
4. We reviewed around 100,000 submissions including those received during phase 1 of the Inquiry and in response to the issues statement.
5. We sent questionnaires to a number of third parties, which included broadcasters, online and print news providers, and digital intermediary platforms. We obtained oral evidence through a roundtable on media plurality and 24 third party hearings. Of these 24 hearings, we published ten summaries and 14 transcripts on the case page. We also published the [transcript of the media plurality roundtable](#). Evidence was also gathered through a number of further written requests for information to the main and third parties.
6. We held hearings with the Parties on 30 November 2017. Summaries of these hearings were published on the case page.

7. On 20 October 2017, all members of the Inquiry Group, accompanied by staff, visited the premises of Sky.
8. On 23 January 2018, a non-confidential version of the provisional findings report and accompanying materials, including a Notice of Possible Remedies (Remedies Notice), were published on the case page.
9. There was a two-week consultation period for the Remedies Notice and a three-week consultation period for the provisional findings. In total we received 20 substantive responses (eight to the Notice of Possible Remedies, 12 to the provisional findings). The non-confidential versions of the substantive submissions received were published on the case page, along with summaries of the other submissions, of which we received 59 in total to the Remedies Notice and provisional findings. We received one confidential submission to the provisional findings, a summary of which was also published on the case page.
10. We held a response hearing with the Parties on 14 February 2018. Summaries of these hearings were published on the case page. We received a revised set of undertakings from Fox following the response hearing, which was published on the case page, along with a third party submission we received in response to the revised undertakings.
11. We held a response hearing with politicians on 21 February 2018. A transcript of this hearing was also published on the case page.
12. We received two sets of undertakings of Fox which were published on the case page. We held a second response hearing with Fox on 5 April 2018, and published a summary of the hearing on the case page.
13. We received two further submissions in response to the new undertakings from Fox, and a further submission to our provisional findings, which were published on the case page.
14. On 1 May 2018, the statutory deadline for the Inquiry, the final report was sent to the Secretary of State for Digital, Culture, Media and Sport.
15. We would like to thank those who have assisted us in our Inquiry.

# Appendix B: The regulation of broadcast media and the press in the UK

## Introduction

1. This appendix provides an overview of the regulatory landscape for broadcasters and the press in the UK.<sup>1</sup> Arrangements for the regulation of broadcasters and the press vary considerably. The appendix addresses, in particular, the legal framework for the regulation of broadcasters via the Communications Act 2003 (CA03) and the Broadcasting Acts of 1990 (the 1990 Act) and 1996 (the 1996 Act). The appendix also addresses the findings and recommendations of the Leveson Inquiry (the Leveson Inquiry) into the culture, practices and ethics of the press, and the changed nature of press regulation in the UK post Leveson.

## The regulation of broadcast media

### *The scope of broadcast regulation*

2. CA03 substantially amended arrangements for the regulation of broadcast media in the UK. The 2003 Act transferred to Ofcom a range of functions previously exercised by the Secretary of State and predecessor regulators.<sup>2</sup> Ofcom is responsible, among other things, for granting licences for the provision of broadcast services in the UK, for ensuring that broadcast licence holders are ‘fit and proper’ persons to hold such licences and for ensuring that broadcasters comply with its Broadcasting Code which implements the broadcasting standards objectives set out in section 319(2) of CA03. As set out later, Ofcom’s powers and duties concern, among other things, the regulation of the broadcast of TV and radio services, including TV programme services transmitted via the internet where the service falls under UK jurisdiction. Material placed on the internet (including by a broadcaster) which does not involve the distribution of TV or radio programme services with a view to their availability for reception by members of the public does not fall within the scope of the Broadcasting Code.<sup>3</sup> On-demand programme services are subject to different regulation.<sup>4</sup>

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<sup>1</sup> This appendix does not seek to set out the regulatory framework for the press or media exhaustively. Instead, it sets out key features of this framework as context for the substantive assessment we carried out.

<sup>2</sup> These include the Broadcasting Standards Commission, the Director General of Telecommunications, the Independent Television Commission and the Radio Authority.

<sup>3</sup> [The most recent iteration of the Broadcasting Code was published in April 2017.](#)

<sup>4</sup> On-demand services are provided for separately by part 4A (sections 368A to 368R of CA03, including specific standards requirements regarding harmful content, advertising, sponsorship and product placement.

3. Section 319(1) of CA03 imposes a duty on Ofcom to ‘to set, and from time to time to review and revise, such standards for the content of programmes to be included in **television and radio services** as appear to them best calculated to secure the standards objectives’ (emphasis added). In addition, Ofcom has a general statutory duty to ‘secure the application, in the case of all **television and radio services**, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services’ (section 3(2)(e) of CA03) (emphasis added). The concept of ‘TV and radio services’ is an important one and is subject to a complex, multi-layered definition in CA03.
4. As indicated by section 319(1) of CA03, Ofcom’s duty to set standards applies in respect of ‘programmes to be included in television and radio services’. A TV programme means ‘any programme (with or without sounds) which— (a) is produced wholly or partly to be seen on television; and (b) consists of moving or still images or of legible text or of a combination of those things’ (section 405, CA03). Moreover, ‘programme’ includes an advertisement and, in relation to a service, anything included in that service...’ (section 405, CA03). The core element of the test is whether the still or moving images are ‘produced wholly or partly’ to be seen on TV.
5. The concept of ‘television and radio services’ is also explained in section 405 of CA03 which clarifies that ‘television and radio services’ means — (a) programme services apart from those provided by the BBC; and (b) services provided by the BBC in relation to which Ofcom have functions’. A ‘programme service’ is defined in section 405 of CA03 to mean ‘(a) a television programme service; (b) the public teletext service; (c) an additional television service;<sup>5</sup> (d) a digital additional television service; (e) a radio programme service; or (f) a sound service provided by the BBC...’.

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<sup>5</sup> Section 362 of CA03 defines ‘additional television service’ to mean ‘... an additional service within the meaning given by section 48 of the 1990 Act for the purposes of part 1 of the 1990 Act. For its part, section 48(1) of the 1990 Act explains that ‘additional service’ means ‘any service which consists in the sending of electronic signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any TV broadcasting service provided on a relevant frequency’. Section 405 of CA03 makes clear that the expression ‘wireless telegraphy’ has the same meaning as in the Wireless Telegraphy Act 2006. Section 116(1) of the Wireless Telegraphy Act 2006 provides that ‘wireless telegraphy’ means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of energy to which subsection (2) applies’. Subsection (2), ‘applies to electromagnetic energy of a frequency not exceeding 3,000 gigahertz that— (a) serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or (b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects’

6. Section 362 of CA03 defines ‘television programme service’ as meaning ‘any of the following— (a) a television broadcasting service;<sup>6</sup> (b) a television licensable content service (TLCS); (c) a digital television programme service;<sup>7</sup> (d) a restricted television service’.
7. Many broadcasters, in practice, rely on a TLCS licence.<sup>8</sup> A TLCS is defined in section 232 of CA03 to mean ‘any service falling within subsection (2) insofar as it is provided with a view to its availability for reception by members of the public being secured by one or more of the following means — (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; (aa) the broadcasting of the service (whether by that person or by another) by means of a radio multiplex service; or (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.’ Section 232(2) makes clear that ‘a service falls within this subsection if it — (a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and (b) consists of, or has as its principal purpose the provision of, television programmes or electronic programme guides, or both’. Thus, TV programme services may be transmitted, eg via the internet in a way that makes them available for reception by members of the public, and, if they fall to the UK’s jurisdiction, using a TLCS licence (and, would be subject to the Broadcasting Code where transmitted in this manner). On-demand programme services are subject to different regulation.
8. The above description provides a non-exhaustive overview of the scope of broadcast regulation. An important question concerns the extent to which online content is regulated by the Broadcasting Code and related powers and duties. Insofar as the standards are concerned, the position is, in short, that the broadcasting standards apply to TV and radio services, including TV programme services distributed for public consumption on an electronic communications network which includes the internet.<sup>9</sup> Online content, even if

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<sup>6</sup> A TV broadcasting service is defined in section 362 of CA03 as follows, ‘television broadcasting service’ means a service which—(a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form); (b) is provided so as to be available for reception by members of the public; and (c) is not— (i) a restricted television service; (ii) a television multiplex service; (iii) a service provided under the authority of a licence under part 1 of the 1990 Act to provide a television licensable content service; or (iv) a service provided under the authority of a licence under part 1 of the 1996 Act to provide a digital television programme service.

<sup>7</sup> A ‘digital television programme service’ has the meaning accorded by section 1(4) of the 1996 Act (section 362, CA03). Section 1(4) of the 2003 Act states ‘digital programme service’ means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2) with a view to their being broadcast in digital form so as to be available for reception by members of the public, whether by him or by some other person’. The section goes on to make clear that a ‘digital programme service’ does not include services falling within the remit of various other licences.

<sup>8</sup> This form of licence is used for satellite, cable and internet but not Digital Terrestrial Television.

<sup>9</sup> Definition of an ‘electronic communications network’: section 32, CA03.



provided by a broadcaster, which does not consist of TV or radio programme services produced wholly or partly to be seen on TV and distributed in a way that makes them available for reception by members of the public, is not covered by the Broadcasting Code or the broadcasting standards objectives.

9. On-demand programme services are regulated by rules set out in part 4A of CA03.<sup>10</sup> CA03 lays down various rules with which service providers must comply. As well as various administrative rules covering matters such as the notification of changes to the service provided, the payment of fees by the service provider to Ofcom and on the supply of information to Ofcom by the service provider, a number of editorial rules are also imposed. These are currently more limited in scope than those which apply to television programme services. The rules cover matters including, for example, the protection of under 18s, incitement to hatred and other forms of harmful content, sponsorship and advertising. Duties in respect of due accuracy and due impartiality are not imposed in respect of on-demand programme services. Ofcom has published some guidance in respect of such services.<sup>11</sup>

## Ofcom's licensing regime

10. It is an offence under section 13 of the 1990 Act to provide a 'relevant regulated television service' without a licence. The power to grant licences falls to Ofcom under section 3 of the 1990 and 1996 Acts. A 'relevant regulated television service' is one which falls to be regulated by Ofcom under section 211 of CA03. This includes the various forms of TV broadcasting service set out in section 211(2) of CA03.<sup>12</sup> This includes TLCS, Television Broadcasting Services and Digital Television Programme Services. As such, the licensing regime encompasses the distribution of TV programme services to the public via the internet.
11. Section 3 of the 1990 and 1996 Acts provide Ofcom with the power to grant broadcasting licences. Ofcom has published guidance for applicants in respect of the various forms of broadcasting licences which may be sought.<sup>13</sup> Any licence granted by Ofcom must be in writing and continue in force for a

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<sup>10</sup> From 1 January 2016, Ofcom has acted as sole regulator for on-demand programme services content. The Advertising Standards Authority remains co-regulator in relation to advertising standards content.

<sup>11</sup> [Rules and guidance: statutory rules and non-binding guidance for providers of on-demand programme services.](#)

<sup>12</sup> These are defined in section 211 of CA03 to include: (a) TV broadcasting services that are provided from places in the UK with a view to their being broadcast otherwise than only from a satellite; (b) TV licensable content services or digital programme services that are provided by persons under the jurisdiction of the UK for the purposes of the Audiovisual Media Services Directive; and (c) restricted TV services that are provided from places in the UK.

<sup>13</sup> These include: Digital TV Programme Service/Digital TV Additional Service (DTPS/DTAS); Television Licensable Content Services (TLCS); Local TV (L-DTPS); and Restricted services for an event (RTSL-E).

period defined by the 1990 Act or 1996 Act or set by Ofcom.<sup>14</sup> As regards scope, a licence may specify or describe a service in respect of which the licence is granted. Ofcom has broad powers to impose conditions on a licence holder. Ofcom may impose any conditions which 'appear to be appropriate' to Ofcom in light of the duties which are, or may be, imposed on Ofcom or upon the licence holder.<sup>15</sup> Ofcom therefore has a significant margin of discretion as to the conditions which it deems 'appropriate' to discharge its own regulatory duties under the 1990 Act and 1996 Act and CA03.<sup>16</sup>

12. The power to impose conditions is broad. Such conditions could exclude from the scope of a licence certain forms of content. In addition, it is common for programming commitments to be imposed on certain types of licensee, requiring the licensee to transmit certain forms of content or limiting the nature and extent of permissible advertising. A condition may also be imposed under section 337 of CA03 in respect of the promotion of equal opportunities and training by the broadcasting business in respect of which the license is held. Ofcom may require a licence holder to give advance notice of proposals affecting shareholdings in the body or the directors of the body, where such proposals are known to the body in order to assist in the discharge of various of its regulatory functions.<sup>17</sup>
13. In addition, Ofcom may also impose conditions regarding the provision of information by the licence holder to Ofcom in order that Ofcom can discharge its functions under CA03 or the 1996 Act.<sup>18</sup> Furthermore, conditions may be imposed regarding payment by the licence holder of fees to Ofcom.<sup>19</sup>
14. Standard licence conditions include the following, among others:
  - (a) a requirement that broadcasters must ensure that the provisions of the Broadcasting Code are observed in the provision of the licensed service;
  - (b) a requirement that broadcasters must establish and maintain procedures for the handling and resolution of complaints about the observance of the Broadcasting Code;

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<sup>14</sup> These periods are laid down in for example, sections 16, 19, 26 and 65, Broadcasting Act 1996 and may be of unlimited duration or may be set by Ofcom pursuant to section 98(1)(b)(1), Broadcasting Act 1990.

<sup>15</sup> Section 4(1) of the 1990 Act and of the 1996 Act. See also section 87 of the 1990 Act and 43 of the 1996 Act.

<sup>16</sup> Ofcom's powers are also limited by the general duties imposed by CA03 as well as the 1990 and 1996 Acts.

<sup>17</sup> Section 5(2)(d) of the 1990 Act.

<sup>18</sup> Section 4(1)(c) the 1990 and 1996 Acts. See also section 87(d), of the 1990 Act and section 43(d) of the 1996 Act.

<sup>19</sup> Section 4(1)(b) of the 1990 and 1996 Acts. See also section 43 of the 1996 Act and 87 of the 1990 Act.

- (c) a requirement for a licensee to have adequate compliance procedures including ‘sufficient persons’ ‘adequately versed’ to be able to ensure compliance on a day to day basis;
  - (d) requirements in respect of the gathering of information to assist in the exercise of Ofcom’s functions.
15. It is open to Ofcom to vary the conditions imposed by a licence pursuant to section 3(4) of the 1990 Act.<sup>20</sup> Section 3(4) provides:

Ofcom may vary a licence by a notice served on the licence holder if— in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to Ofcom about the variation.

Ofcom must therefore consult prior to amending the licence of an existing licence holder. Any representation must be taken into account in any decision on variation. But Ofcom is permitted to form its own view, in accordance with public law principles, as to whether a variation is required.

### ***Fit and proper person test***

16. As regards the granting of a licence, section 3(3) common to both the 1990 Act and the 1996 Act lays down a ‘fit and proper’ person test. Section 3(3) of the 1990 Act states:

Ofcom— (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and

(b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence.

This provision is reiterated in section 3(3) of the 1996 Act. The effect of these provisions is to impose on Ofcom a duty to ensure that any new licence applicant is a fit and proper person to hold a broadcasting license and, in addition, that any existing licensee continues to be a fit and proper person to

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<sup>20</sup> Analogous provisions (in respect of different forms of licence) are set out in section 3(4) of the 1996 Act. See also section 86 of the 1990 Act.

hold such a licence. In addition, Ofcom must refuse to issue a licence to a 'disqualified person.'<sup>21</sup>

17. Ofcom has not published general guidance as to the approach it adopts in respect of the fit and proper test set out in section 3 of the 1990 and 1996 Acts.<sup>22</sup> A broad range of evidence may be relevant to a fit and proper assessment. In practice, the kinds of factors Ofcom looks at in determining whether a licence holder is a fit and proper person may include relevant evidence of misconduct in respect of the licence holder as well as their competence, capabilities and compliance history.
18. Insofar as a licence holder's compliance history is concerned, relevant matters include both compliance with any licensing requirements previously imposed as well as compliance with the Broadcasting Code more generally. In addition, Ofcom may also have regard to broader allegations of criminality or misconduct made against a licence holder. In its 2012 fit and proper decision in respect of Sky, Ofcom regarded allegations of criminality, in particular, phone hacking in News Group Newspapers as relevant to its fit and proper assessment. In addition, information concerning the corporate governance structure of the broadcaster may also be considered, as part of an assessment as to whether these arrangements may mitigate or aggravate concerns which may otherwise arise.
19. It is unusual for Ofcom to find that an existing licence holder is not a fit and proper person to hold a licence. It has done so on two previous occasions. In September 2010 Ofcom revoked three broadcasting licences held by Bang Media (London) Ltd and Bang Channels Ltd.<sup>23</sup> In that decision, factors taken into account by Ofcom included the following: the number of previous breaches of the Broadcasting Code; failure by Bang Ltd to pay a fine following a sanctions decision by Ofcom; the seriousness of the breaches and the failure of Bang Ltd to put in place effective arrangements to prevent future infractions. In addition, in 2017 a licence was removed from Iman FM as a result of concerns that content had, on numerous occasions, incited violence.<sup>24</sup>

## Broadcasting standards

20. There are a number of statutory duties imposed on Ofcom in respect of broadcasting standards:

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<sup>21</sup> Schedule 2, part 2 of the 1990 Act.

<sup>22</sup> Ofcom has published a brief '[Q and A](#)' on the fit and proper person test.

<sup>23</sup> [Notice of revocation](#).

<sup>24</sup> Ofcom's [breach decision](#) and [revocation notice](#).

- (a) CA03 imposes a duty to Ofcom ‘to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives’ (section 319(1) of CA03);
  - (b) Ofcom has a general statutory duty to ‘secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services’ (section 3(2)(e) of CA03);
  - (c) in performing its functions (including in applying the Broadcasting Code to complaints) Ofcom must have regard to ‘the need to secure that the application in the case of television and radio services of standards ... is in the manner that best guarantees an appropriate level of freedom of expression’ (section 3(4)(g) of CA03);
  - (d) Ofcom must refuse to grant a TLCS licence if the proposed service would be likely to involve contraventions of the standards for programmes and advertising (section 235 of CA03).
21. For its part, a licensee must ensure that all content to be included in the proposed licensed service will be able to comply with the relevant codes including:
- (a) the Broadcasting Code, which covers standards in programmes including ‘due accuracy’ in news, and ‘due impartiality’;
  - (b) Code on Scheduling of Television Advertising (COSTA) Code, which sets limits on the amount of advertising that can be transmitted (eg no more than 12 minutes per hour) and when advertising can be scheduled; and
  - (c) the Broadcast Committee of Advertising Practice (BCAP) Code, which covers standards for the content of broadcast advertising.

### ***The broadcasting standards objectives***

22. Ofcom is required under CA03 and the 1996 Act to draw up a code for TV and radio, concerning standards in a wide range of matters. Section 319(4) of CA03 imposes a duty on Ofcom ‘to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives’. Relevant standards are set out in sections 319 to 322 of CA03.
23. The ‘standards objectives’ are defined in section 319(2). These standards are:

- (a) that persons under the age of 18 are protected;
  - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
  - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 [eg the duty of special impartiality] are complied with;
  - (d) that news included in television and radio services is reported with due accuracy;
  - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
  - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
  - (g) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
  - (h) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
  - (i) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
  - (j) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
  - (k) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
  - (l) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
  - (m) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
24. In short, standards include due accuracy and due impartiality, a restriction on harmful or offensive material, as well as other matters including advertising,

product placement, responsible broadcasting in respect of religious programmes, and the control of political advertising.

### ***Special impartiality***

25. Section 320 (referred to in section 319(2)(c) of CA03) imposes additional ‘special impartiality’ requirements in respect of ‘matters of political or industrial controversy’ and ‘matters relating to current public policy’. Insofar as such matters are concerned, the requirements of special impartiality are that broadcasters must:
- (a) exclude from TV and radio services (save for restricted services as per section 245 of CA03<sup>25</sup>) ‘all expressions of the views or opinions **of the person providing the service** on any of the matters [specified in section 320(2) of CA03]’ (emphasis added);<sup>26</sup>
  - (b) preserve, in the case of every TV programme service, teletext service, national radio service and national digital sound programme service, due impartiality on the part of the person providing the service in respect of matters in section 320(2) of CA03;<sup>27</sup>
  - (c) prevent, in the case of every local radio service, local digital sound programme service or RLCS service, ‘the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of [the matters prescribed in section 320(2) of CA03]’.
26. Further specific provision for due impartiality is made in respect of ‘major’ matters of political or industrial controversy or public policy. Section 320(6) of CA03 provides that the Broadcasting Code ‘must, in particular, take account of the need to ensure the preservation of impartiality in relation ... (a) matters of major political or industrial controversy’ and (b) ‘major matters relating to current public policy’. As explained later, specific provision is made by Ofcom in respect of major matters in section five of the Broadcasting Code.
27. A broadcaster may satisfy the special impartiality requirements of section 320(1)(b) of CA03 by reference to ‘a series of programmes taken as a whole’.

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<sup>25</sup> According to section 245(4)(c) of CA03 restricted service is a service which ‘if it is a sound broadcasting service provided ... with a view to its being broadcast for reception— (i) within a particular establishment in the United Kingdom or at another defined location in the United Kingdom; or (ii) for the purposes of a particular event taking place within the United Kingdom’.

<sup>26</sup> Section 320 (1)(a), [CA03](#).

<sup>27</sup> Section 320 (1)(b), [CA03](#).

The Broadcasting Code provides further guidance in respect of this test, as explained later.

### ***Scope of the duties of due impartiality, due accuracy and special impartiality***

28. The general requirements of due impartiality and due accuracy apply to 'news'. As regards the due impartiality and due accuracy standards, section 319(8) of CA03 clarifies that news means news in whatever form it is included in a service. Ofcom's guidance to section five of the Broadcasting Code clarifies that news includes news bulletins, news flashes and daily news magazine programmes.
29. The impartiality and accuracy standards are therefore not limited to news when broadcast in a slot or segment designated by a broadcaster as news. However, the concept of news is not expressly defined in CA03 or the 1990 or 1996 Acts.
30. The duty of special impartiality is **not limited** to news but applies to other programmes included in a licensed service by broadcasters regarding 'matters of political or industrial controversy' or 'current public policy'.<sup>28</sup>

### ***Relevant considerations in respect of the Broadcasting Code***

31. Section 319(4) of CA03 makes clear that in 'setting or revising' standards set out in the Broadcasting Code, Ofcom 'must have regard ... to such extent as appears to them to be relevant to the securing of the standards objectives', to various particular matters specified in section 319(4) of CA03. These factors include:
  - (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
  - (b) the likely size and composition of the potential audience for programmes included in TV and radio services generally, or in TV and radio services of a particular description;
  - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;

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<sup>28</sup> There are different impartiality requirements for different kinds of broadcasting licence.



- (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
  - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
  - (f) the desirability of maintaining the independence of editorial control over programme content.
32. In practice, Ofcom take these contextual factors into account when applying the broadcasting standards.<sup>29</sup>
33. In drafting and enforcing the Broadcasting Code, Ofcom must also comply with the rights set out in the European Convention on Human Rights (ECHR) and, in particular, the right to private and family life (Article 8) and the right to free expression (Article 10).

## The Broadcasting Code

34. The Broadcasting Code provides rules and principles as well as guidance concerning how broadcasters must comply with the broadcasting standards set in accordance with CA03. As well as the Broadcasting Code itself, Ofcom has published Guidance Notes on the Broadcasting Code (the Guidance Notes) as to how the Broadcasting Code will ordinarily be interpreted by Ofcom. The Broadcasting Code and supplementary Guidance Notes cover a range of matters including: protection for the under 18s; harm and offence; crime, disorder, hatred and abuse; religion, due impartiality and accuracy; elections and referendums; fairness; privacy; commercial references on TV and commercial communications on radio.
35. For the avoidance of any doubt, all of the standards objectives referred to earlier are relevant to our consideration of the broadcasting standards consideration in section 58 (2C)(c) of the Enterprise Act 2002 (the Act). However, in the next section we briefly describe the manner in which certain standards are implemented, namely those of due impartiality, special impartiality and due accuracy. These standards are not only relevant to the broadcasting standards consideration but are also relevant to the media plurality consideration in particular, given that it has been suggested to us that

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<sup>29</sup> The [Broadcasting Code](#), page 5.

the Broadcasting Code would prevent or inhibit the extent to which increased editorial alignment could occur.

### ***Due impartiality and due accuracy***

36. The Broadcasting Code sets out the following principles as regards due impartiality and due accuracy.<sup>30</sup> Broadcasters must:
- ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality;
  - ensure that the special impartiality requirements of CA03 are complied with.
37. Section 319(8) of CA03 clarifies that ‘news’ means ‘news in whatever form it is included in a service’. The Broadcasting Code clarifies that news includes news bulletins, news flashes and daily news magazine programmes. The requirement of due impartiality in respect of news does not prevent a broadcaster from adopting its own interpretation in respect of the news items it presents. Ofcom’s guidance on section five of the Broadcasting Code makes clear ‘[i]n accordance with a broadcaster’s right to freedom of expression, the broadcaster has the right to interpret news as it sees fit, as long as it complies with the Code’. Thus, in presenting news it is permissible for broadcasters to adopt a particular ‘take’ on news items subject to the overall duty of due impartiality. This means that the same news item (or news generally) may be interpreted or analysed differently by, for example, Channel 4 Al Jazeera, ITN or the BBC. The Broadcasting Code affords a degree of latitude to each broadcaster to adopt its own interpretation.
38. The Broadcasting Code requires that significant mistakes in news should normally be acknowledged and corrected on air quickly and such corrections appropriately scheduled.<sup>31</sup> In addition, no politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified (in that case, the political allegiance of the person must be made clear to the audience).<sup>32</sup>
39. Ofcom provides the following guidance as regards the concept of ‘due’ impartiality in the Broadcasting Code, making clear that the requirements of impartiality are context dependent:

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<sup>30</sup> The [Broadcasting Code](#), section five.

<sup>31</sup> The [Broadcasting Code](#), section five, paragraph 5.2. Note that in the case of the BBC’s on-demand programme services the requirement is for any significant mistakes to be corrected quickly and appropriately signalled to viewers.

<sup>32</sup> The [Broadcasting Code](#), section five, paragraph 5.3.

'Due' is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. 'Due' means adequate or appropriate to the subject and nature of the programme. So 'due impartiality' does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.<sup>33</sup>

40. The concept of due accuracy is not expressly defined in the Broadcasting Code. However, in the supplementary Guidance Notes Ofcom makes clear that the reference to **due** accuracy indicates that, like impartiality, the degree of accuracy required in a particular instance may vary according to context (for example, the subject matter of the programme or its intended audience).<sup>34</sup> Ofcom also makes clear that where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher.<sup>35</sup>
41. The concepts of due impartiality and due accuracy are interpreted and applied by Ofcom in line with the requirements of the right to freedom of expression set out in Article 10 of the ECHR.<sup>36</sup> Ofcom explains that broadcasters have the right to interpret news events as they see fit, as long as they comply with the Broadcasting Code; but that broadcasters should take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations: eg statistical findings or ambiguous statements made by politicians.<sup>37</sup>

### ***Special impartiality in respect of political, industrial and policy matters***

42. As noted above, special impartiality requirements are also imposed by section 320 of CA03 in respect of matters of political and industrial controversy or

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<sup>33</sup> The [Broadcasting Code](#), section five, page 28.

<sup>34</sup> [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.7.

<sup>35</sup> [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.7.

<sup>36</sup> [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.9.

<sup>37</sup> [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.9.

matters relating to current public policy. These requirements are implemented by section five of the Broadcasting Code, where such matters are defined as:

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions etc.<sup>38</sup>

43. The person providing the broadcasting service must not, in general, adopt and express views in respect of any of these matters and must remain impartial in respect of them. This requirement is further explained in rules 5.4 and 5.5 of the Broadcasting Code, which explain:

Programmes ... must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

Due impartiality on matters of political or industrial controversy and current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

44. The position in respect of personal view or discussion programmes is somewhat different. While the duty of impartiality (and that of special impartiality) still applies, rule 5.9 of the Broadcasting Code makes clear that - with the exception of news presenters and reporters in news programmes - presenters of 'personal view' or 'authored' programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. The impartiality duties are therefore applied differently in the context of such programmes.
45. The Broadcasting Code, however, also makes clear that:

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<sup>38</sup> The [Broadcasting Code](#), section five, page 29.

- (a) alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole;
- (b) in addition, ‘presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views’.
46. The Broadcasting Code makes clear that ‘in dealing with matters of **major** political and industrial controversy and major matters relating to current public policy an appropriately wide range of **significant views** must be included and given due weight in each programme or in clearly linked and timely programmes’ (emphasis added).<sup>39</sup> In practice, where a programme covers a ‘major’ matter, Ofcom will scrutinise the broadcast with a greater degree of intensity.
47. In assessing whether a broadcaster has canvassed alternative viewpoints sufficiently to comply with the requirements of the Broadcasting Code contextual factors are again important. As earlier noted, when assessing due impartiality, Ofcom takes into account a range of factors – including whether the programme, channel or service is aimed at a UK audience. In particular, Ofcom considers the likely expectation of the audience as to content and the extent to which the content is signalled to the audience, in its assessment.
48. Ofcom’s Guidance Notes to section five explain:
- Significant views could include the viewpoint of nation states whose policies are considered to be matters of major political and industrial controversy and major matters relating to current public policy.
- As part of treating viewpoints with ‘due weight’ a broadcaster may debate and discuss such views. However, broadcasters must not dismiss or denigrate such viewpoints and include them in a programme simply as a means to put forward their own views.<sup>40</sup>
49. Thus, a broadcaster is permitted to broadcast opinion based programmes which adopt a particular viewpoint. But where this is done, such programmes must be balanced with alternative viewpoints, either on that programme or in ‘a series of programmes taken as a whole’.

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<sup>39</sup> The [Broadcasting Code](#), section five, paragraph 5.2.

<sup>40</sup> [Guidance notes: due impartiality and due accuracy and undue prominence of views and opinions: guidance notes on section five](#), paragraph 1.58 and 1.59.

50. The concept of a 'series of programmes' is therefore particularly important as regards the duty of due impartiality since it is possible for a broadcaster to satisfy the requirements of impartiality by reference to a series of programmes and not just one. The concept is accorded a specific (and relatively narrow) meaning by the guidance. Rule 5.5 of the Broadcasting Code makes clear that:

[A] series of programmes taken as a whole is understood to mean 'more than one programme in the same service, **editorially linked**, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject. (emphasis added).

51. In addition, rule 5.6 makes clear that '[t]he broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air'. It would not ordinarily be sufficient, therefore, to justify a programme presenting partial, opinionated content, by reference to a programme, at a quite different time, with no editorial link which happens to include alternative viewpoints. For an ostensibly partial programme to be justified by reference to other programming, there must be an editorial link between the programmes and the link between the programmes should be made clear on air to the audience.
52. When assessing due impartiality, Ofcom takes into account a range of factors – including whether the programme, channel or service is aimed at a UK audience. In particular, Ofcom considers that the likely expectation of the audience as to content and the extent to which the content is signalled to the audience is a key consideration in its assessment. In that regard, Ofcom considers that UK audiences would have different expectations of impartiality for an overseas channel which is aimed at a UK audience and for an overseas channel broadcast in the UK, but which is aimed at an overseas audience.
53. Ofcom has investigated and on various occasions recorded breaches of the requirement for due accuracy and for due impartiality and special impartiality against broadcasters including, for example, Channel 4 News,<sup>41</sup> Russia Today (RT),<sup>42</sup> and Fox News<sup>43</sup> among others.

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<sup>41</sup> [Ofcom issue 336 broadcast on-demand bulletin](#).

<sup>42</sup> [Ofcom issue 213 broadcast on-demand bulletin](#). A more detailed list of Ofcom's section five investigations addressing inaccuracy, partiality or alleged breach of the duty of special impartiality is also available.

### ***Monitoring and enforcement***

54. Ofcom investigates and, where appropriate, adjudicates upon complaints in respect of compliance by a broadcaster with the broadcasting standards. Complaints are examined by a content standards case assessor. A decision is taken as to whether a complaint raises issues warranting the launch of a formal investigation. Investigations are undertaken by a case officer or case manager and, if Ofcom intends to publish the case (which it will do if there is a breach or if there is no breach but it is of public interest to publish a 'no breach decision'), a preliminary view is sent to the broadcaster. Submissions on Ofcom's preliminary view may be made by the broadcaster at this stage. A final decision is then taken by a senior member of Ofcom's executive with appropriate board-delegated authority, who will not have been involved in the investigation and/or the preparation of the preliminary view.
55. In 2016 to 2017, Ofcom received 15,922 complaints. Based on those complaints, Ofcom carried out 162 investigations, including 68 investigations into harm and offence, four investigations into due accuracy, and 11 investigations into due impartiality. In this period, Ofcom found 97 breaches of the Broadcasting Code.
56. As regards monitoring, Ofcom does not continuously monitor compliance with the Broadcasting Code and licensing requirements by all licensees given the resources required for monitoring. Ofcom takes a risk-based approach to identifying services which it considers should, from time to time, be monitored.
57. Where Ofcom finds that the Broadcasting Code has been breached it has a range of sanctioning powers at its disposal. Remedial measures can include on-air corrections as well as financial penalties, licence suspension and licence revocation, which may be appropriate in the case of more serious or repeated breaches.

### **Regulation of the press**

58. The system for the regulation of the press is quite different from the system for the regulation of broadcasting. Crucially, whereas broadcasters are under a duty of impartiality there is no such duty on the press. Newspapers are, almost invariably, partisan in their approach to all manner of political or public policy issues. The nature of regulation is also quite different in the context of the press. In contrast to broadcasters, which are subject to a regime of compulsory regulation overseen by Ofcom, the press is self-regulating.

## ***The Leveson Inquiry***

59. The Leveson Inquiry was established in 2011 to investigate the culture, practices and ethics of the press following the phone hacking scandal. At the time it was anticipated that the Leveson Inquiry would be divided into two parts, owing to ongoing police investigations into the phone hacking. On 1 March 2018, the Secretary of State confirmed that Part II of the Leveson Inquiry would not be going ahead.<sup>44</sup>
60. The Leveson Inquiry considered the culture, practices and ethics of the press, including contacts between the press and politicians and the press and the police; it considered the extent to which the regulatory regime in place at the relevant time failed and whether there was a failure to act upon any previous warnings about media misconduct.<sup>45</sup>
61. The Leveson Inquiry found that in the period prior to 2011, regulation of the press had failed. Lord Justice Leveson identified four key criticisms of the Press Complaints Commission (PCC) namely:
- (a) the PCC was not a regulator but a complaints handling body;
  - (b) the PCC was hamstrung by numerous structural deficiencies, in particular a lack of independence. The Editors' Code Committee which sets the Editors' Code of Practice (the Editors' Code)<sup>46</sup> was wholly made up of serving editors and was separate from the PCC and appointed by persons wholly within the industry. In addition, it had limited resources, insufficient to enable it to do all that it needed;
  - (c) the PCC had inadequate powers. In particular, it lacked power to conduct an effective investigation and was dependent on what it was told by the press organisation being investigated;

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<sup>44</sup> In a speech to the House of Commons, the Secretary of State said: 'The Leveson inquiry was a diligent and thorough examination of the culture, practices and ethics of our press in response to illegal and improper press intrusion ... It is clear that we have seen significant progress from publications, from the police and from the new regulator ... We do not believe that reopening this costly and time consuming public Inquiry is the right way forward, so considering all the factors that I have outlined to the House today, I have informed Sir Brian that we are formally closing the Inquiry.' [House of Commons Hansard, 1 March 2018, Volume 636, Leveson Inquiry](#) for the full text.

<sup>45</sup> It was anticipated that Part II of the Leveson Inquiry would consider the extent of unlawful or improper conduct within News International, other media organisations or other organisations. It would also consider the extent to which any relevant police force investigated allegations relating to News International, and whether the police received corrupt payments or were otherwise complicit in misconduct.

<sup>46</sup> The Editors' Code sets out a body of principles and rules concerning matters such as accuracy, the protection of privacy and a prohibition on harassment. These rules are drawn up by the Editors' Code Committee which is comprised, mostly, of editors. Prior to its dissolution, the Editors' Code was enforced by the PCC.



- (d) the powers it had were under-utilised. For example, the PCC did not monitor press compliance with the Editors' Code.
62. Based on its findings regarding these shortcomings, the Leveson Inquiry recommended:<sup>47</sup>
- (a) an independent, self-regulatory regime be established to regulate the press going forward. The Leveson Inquiry made a series of recommendations as to the requirements that a self-regulatory body should fulfil in future on a range of matters. These included: the structural and financial independence of any regulatory body established by the press; a requirement that a recognised regulatory body should require its members to have an 'adequate and speedy' complaints handling mechanism; a greater range of remedial powers should be at the disposal of the regulator including the power to impose substantial fines (up to 1% of turnover up to a maximum of £1 million). As regards investigations, the Leveson Inquiry recommended that a recognised regulatory body should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the Editors' Code and failures to comply with directions of the board of the regulator in question;
- (b) the Leveson Inquiry rejected the suggestion that regulation should be compulsory. Instead, it recommended that a recognition body be established with power to determine whether, upon application, a self-regulatory body adhered to the requirements identified by the Leveson Inquiry and, if so, to recognise such a body. The Leveson Inquiry recommended that recognition should confer a series of tangible benefits on the members of a recognised body to encourage membership and the adoption of higher standards of regulation. This included the possibility of exemplary damages payable by a publisher which was not member of the press recognition body and changes to the Civil Procedure Rules so that members of a non-recognised regulator would not necessarily obtain their legal costs, even if sued unsuccessfully by a claimant in respect of a publication.
63. Following consideration by parliament, many of the recommendations made by the Leveson Inquiry have now been implemented.

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<sup>47</sup> [A summary of the Leveson Inquiry's findings and recommendations is available online.](#)

*Implementation of the Leveson Inquiry recommendations*

64. The Press Recognition Panel (PRP) was established on 3 November 2014 by Royal Charter. The PRP is empowered to confer recognition upon a self-regulatory body established by the press where that body complies with the Charter Recognition Criteria laid down in schedule 3 of the Royal Charter. These criteria reflect those identified by the Leveson Inquiry including the following:
- (a) requirements concerning appointments, financing and structures designed to ensure the independence of the regulatory body and its board;
  - (b) requirements concerning complaints processes;
  - (c) a requirement that a regulatory body 'should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the board' as well as there being an obligation on those investigated to comply with the investigation;
  - (d) a requirement that the body have power to 'impose appropriate and proportionate sanctions (including but not limited to financial sanctions up to 1% of turnover attributable to the publication concerned with a maximum of £1 million) on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body';
  - (e) a requirement that the body afford complaints an arbitral process for civil legal claims which complied with the Arbitration Act 1996.
65. Sections 34 and 40 of the Crime and Court's Act 2013 have been enacted (though neither has entered into force). As envisaged in the Leveson Inquiry's recommendations, section 34 permits the award of exemplary damages against a publisher for a tortious publication resulting in libel, slander, misuse of personal information or breach of confidence. Section 40 of the Crime and Court's Act 2013 generally precludes the award of costs against a member of an approved regulator even if that publisher is found liable for unlawful conduct (unless the court considers the award of costs to be just and equitable). No such protection is generally afforded to publishers who are not members of an approved regulator.
66. Since the Leveson Inquiry two self-regulatory bodies have been established to regulate the press, the independent press standards organisation (IPSO) and IMPRESS.

***Independent press standards organisation***

67. IPSO was established on 8 September 2014 following the dissolution of the PCC. IPSO has not sought recognition from the PRP but, in practice, IPSO regulates the vast majority of the UK press. Indeed, IPSO regulates almost all major UK national daily titles (90% by circulation) including The Sun, The Times and The Sunday Times. However, not all major publications fall within its remit (for example, IPSO does not regulate The Guardian, The Observer, The Financial Times or The Evening Standard). IPSO is funded by the Regulatory Funding Company (RFC), which does this by raising a levy on the news media and magazine industries. Board members of RFC include Pia Sarma (Editorial Legal Director at The Times), and representatives from The Telegraph, Daily Mail and General Trust Group (DMGT), and Northern and Shell.
68. IPSO's board is responsible for the oversight, vision and strategic direction of IPSO. It monitors performance and through the IPSO Executive provides advice and support to member publishers. The board is also responsible for appointing the IPSO Complaints Committee. The Complaints Committee judges complaints relating to potential breaches of the Editors' Code and decides on what a newspaper or magazine should do if the Editors' Code has been breached - including whether or not to find that publication of a correction or critical ruling is needed to remedy a breach of the Editors' Code. IPSO has the power to determine the nature and extent of the ruling, on what page, in what font size, position and with a headline determined by the regulator.
69. IPSO's powers are set out in its regulations, namely:
- (a) it has power to adjudicate upon complaints made to it regarding non-compliance with the Editors' Code. The Editors' Code deals with matters including accuracy, privacy, the protection of children and harassment. Publishers have a legally enforceable contractual duty to cooperate with IPSO in the resolution of complaints. IPSO publishes statistics regarding the number of complaints received and upheld against each regulated publisher on an annual basis;
  - (b) IPSO's remedial powers are set out in regulations 30 and 31 of the IPSO regulations. Where IPSO finds that a publisher has breached the Editors' Code it may require the publication to publish a correction or critical adjudication in the place and size of IPSO's choosing. IPSO does not have power to fine a publisher where a complaint is upheld. However, a fine may be imposed following a standards investigation launched by IPSO;

- (c) IPSO members are required to produce an annual statement addressing various matters including: details of the publisher's compliance processes, including how the publisher deals with compliance with the Editors' Code and editorial complaints;
- (d) under regulation 53.1 of the IPSO regulations, 'where [it] reasonably considers that there may have been serious and systemic breaches of the Editors' Code' it may commence a standards investigation. IPSO has the power to initiate a standards investigation for a variety of other reasons, including failure to comply with directions. As part of a standards investigation, IPSO may request disclosure of documents, answers to questions or access to persons. In the event of a dispute as to the permissibility of such a request, IPSO's board has the final decision under regulation. Following the decision of a standards investigation, IPSO may impose a range of measures including a fine, costs or termination of the membership of the publisher under regulation. Fines or costs may only be imposed where sufficiently serious. To date, IPSO has never launched a standards investigation.
- (e) IPSO operates an arbitration scheme to provide a cost effective, straightforward and quick method of solving legal disputes between claimants and participating members of the press, including claims for libel, slander, misuse of private information, breach of confidence, malicious falsehood, harassment and data protection. It is a voluntary scheme where in which both parties agree to binding arbitration overseen by specialist barristers. It is managed by alternative dispute resolution provider, CEDR.

## **IMPRESS**

- 70. IMPRESS was approved by the PRP as a recognised regulator on 25 October 2016. On 12 October 2017, the High Court upheld the recognition decision of IMPRESS following a challenge by the News Media Association (NMA), which represents media organisations in the UK. The NMA has said that it will be seeking leave to appeal the judgment to the Court of Appeal.
- 71. As a recognised regulatory body, the PRP has certified that IMPRESS has in place procedures which comply with all of the requirements identified in schedule 3 of the Royal Charter (set out earlier). As such, all members of IMPRESS will be entitled to the benefits of sections 34 and 40 of the Crime and Court's Act 2013, if and when this provision enters into force.

72. Presently, none of the main publishers in the UK are regulated by IMPRESS. In particular, none of News Corp's UK titles (such as The Sun or The Times) are regulated by IMPRESS.
73. IMPRESS is funded by the Independent Press Regulation Trust (IPRT) and by participating publisher subscriptions. The IPRT is a charity which seeks to promote independent press regulation. It can, in principle, award grants to any organisation which shares this charitable aim. The IPRT is, in turn, presently funded through the Alexander Mosley Charitable Trust. Until 24 July 2017, IMPRESS applied the Editors' Code of Practice (the same as IPSO). In 2017, IMPRESS published the IMPRESS Standards Code, which it now uses to judge the conduct of publishers. The IMPRESS Standards Code covers similar issues to the Editors' Code of Practice albeit with some significant variations. Like the Editors' Code there is no duty of impartiality under the IMPRESS Standards Code.

### ***The press codes of practice***

74. As explained earlier, there are now two codes of practice for the self-regulation of the press in operation in the UK: The Editors' Code and the IMPRESS Standards Code. IPSO applies the Editors' Code. The Editors' Code sets out the rules that newspapers and magazines regulated by IPSO have agreed to follow. The Editors' Code is written and administered by the Editors' Code Committee and enforced by IPSO. The Editors' Code Committee is separate from IPSO (although the Chair of IPSO, Sir Alan Moses and the Chief Executive of IPSO Matt Tee, are also Editors' Code Committee Members).
75. The preamble to the Editors' Code emphasises:
- [I]t is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.
76. The Editors' Code deals with issues such as accuracy, invasion of privacy, intrusion into grief or shock and harassment. In contrast to the Broadcasting Code, the Editors' Code does not impose any duty of impartiality.

77. Insofar as accuracy is concerned, the Editors' Code provides that '[t]he Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text'. It further provides:

A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.

78. Although there is no impartiality requirement, the Editors' Code does provide that '[t]he Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact'. In other words, comment and editorialised comment must be distinguished from factual journalism. As well as publishing the Editors' Code, the Editors' Code Committee also publishes various guidance notes on the interpretation and application of the Editors' Code in practice. The guidance notes cover a range of specific issues including: coverage of mental health issues; court reporting; coverage concerning refugees and asylum seekers; persons accused of crime.
79. The IMPRESS Standards Code is owned and controlled by IMPRESS, independently of editors. It was developed following a comprehensive consultation exercise involving the general public, civil society groups and the news publishing industry. It addresses similar issues to the Editors' Code. Some of the obligations are, however, formulated slightly differently. For example, section 1.1 of the IMPRESS Code requires publishers to 'take all reasonable steps to ensure accuracy'. Although the IMPRESS Code makes no reference to the 'spirit' of the document it does make clear that the IMPRESS Code is meant to be '[a] practical working tool that enables journalists, editors and publishers to do their jobs'. However, the IMPRESS Code includes some significant variations to the Editors' Code. It includes a comprehensive definition of the public interest, a presumption that corrections will normally be made with equal prominence, a specific clause which prohibits hate speech. It also provides the opportunity for representative groups (not just affected individuals) to bring complaints to IMPRESS about news content that makes prejudicial, pejorative or irrelevant references to a person's protected characteristics, if the complaint is in the public interest.

## Appendix C: The Broadcasting Code

### Details of the sections of the Broadcasting Code

1. Ofcom is required under CA03 and the 1996 Act to draw up a code for TV and radio, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. This code is referred to as the Broadcasting Code.
2. The Broadcasting Code is set out in terms of principles, meanings and rules and is there to help readers understand the broadcasting standards objectives and to apply rules. All broadcasters must ensure they comply with the rules as set out in the Broadcasting Code. It is the responsibility of the broadcaster to ensure compliance with the Broadcasting Code.
3. The Broadcasting Code is divided into ten sections. Sections one to nine of the Broadcasting Code (except sections seven and eight) relate to the content the general public sees and/or hears as viewers and listeners. Our assessment of breaches by broadcasters in chapter 15 does not consider sections seven, eight or ten of the Broadcasting Code. This is because section seven and section eight are different from the other sections of the Broadcasting Code, as they apply to how broadcasters treat the individuals or organisations directly affected by programmes and do not relate to the standards objectives under section 319 of CA03; section ten applies to radio only. All sections of the Broadcasting Code are summarised here.

#### ***Section one: Protecting the under 18s***

4. This section outlines the rules around scheduling and content information in programmes with regard to protecting children under the age of 18.

#### ***Section two: Harm and offence***

5. This section outlines standards for broadcast content so as to provide adequate protection for members of the public from harmful and/or offensive material.

#### ***Section three: Crime, disorder, hatred and abuse***

6. This section of the Broadcasting Code covers material that is likely to incite crime or disorder, reflecting Ofcom's duty to prohibit the broadcast of this type of programming.

***Section four: Religion***

7. This section relates to the responsibility of broadcasters with respect to the content of religious programmes.

***Section five: Due impartiality and due accuracy***

8. This section is to ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality, and to ensure that the special impartiality requirements of CA03 are complied with.

***Section six: Elections and referendums***

9. This section covers the special impartiality requirements and other legislation that must be applied at the time of elections and referendums.

***Section seven: Fairness***

10. This section is to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.

***Section eight: Privacy***

11. This section is to ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

***Section nine: Commercial references on TV***

12. This section relates to broadcasters' editorial independence and control over programming with a distinction between editorial content and advertising.

***Section ten: Commercial communications on radio***

13. This section relates to radio broadcast only and is to ensure the transparency of commercial communications as a means to secure consumer protection



## Appendix D: Background to the media plurality consideration

### Introduction

1. In undertaking our analysis of the media plurality consideration we have taken account of its background. In particular this appendix sets out:
  - (a) the context in which the media plurality consideration was adopted in 2003 and current rules on cross-media ownership;
  - (b) how the concept of media plurality has been interpreted and applied since 2003; and
  - (c) Lord Justice Leveson's consideration of media plurality in the Leveson Inquiry and subsequent developments.
2. Our assessment of the media plurality public interest consideration has drawn on a range of sources:
  - (a) the [Explanatory Notes](#) to CA03 (in particular, paragraphs 802 to 811);
  - (b) the [Hansard report of 5 June 2003](#) in which the amendment that inserted section 58(2C) of the Act was moved (in particular from column 1,431) and subsequent debates in parliament (in particular the [Hansard report of 8 July 2003](#));
  - (c) Department of Trade and Industry (DTI) May 2004 guidance '[Enterprise Act 2002: Public Interest Intervention in Media Merger: Guidance on the operation of the public interest merger provisions relating to newspaper and other](#)' (the DTI Guidance);
  - (d) the Competition Commission's (CC) 14 December 2007 [report on the acquisition by British Sky Broadcasting Group Plc of 17.5% of the shares of ITV](#) (BSkyB/ITV report);
  - (e) the Court of Appeal's decision in [British Sky Broadcasting Group plc v The Competition Commission \[2010\] EWCA Civ 2 \(Court of Appeal BSkyB/ITV judgment\)](#) and the earlier Competition Appeal Tribunal (CAT) judgment ([2008 CAT 25](#)) (CAT [BSkyB/ITV judgment](#));
  - (f) Ofcom's December 2010 [report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation](#) (News Corp/BSkyB);

- (g) Ofcom's June 2012 advice to the Secretary of State, '[Measuring media plurality](#)';
- (h) Ofcom's October 2012 [report on public interest test on the acquisition of Guardian Media Group's radio stations \(Real and Smooth\) by Global Radio](#) (Global/GMG);
- (i) Lord Justice Leveson's November 2012 report [An Inquiry into the Culture, Practices and Ethics of the Press](#) (the Leveson Report) (in particular part 3 chapter 4 'Plurality' on page 180);
- (j) the House of Lords Select Committee on Communication February 2014 [Report on Media Plurality](#) (House of Lords media plurality report) and the government's August 2014 [response](#);
- (k) Ofcom's November 2015, [Measurement Framework for Media Plurality](#); and
- (l) Ofcom's November 2015 [Report to the Secretary of State on the operation of the media ownership rules listed under section 391 of the Communications Act 2003](#) (2015 Media Ownership Report).

## **The context in which the media plurality consideration was adopted in 2003 and current rules on cross-media ownership**

### ***Protection of media plurality before CA03***

3. The 1990 Act introduced a new licensing regime for commercial TV and radio broadcast services. Specific controls were introduced to ensure plurality in the provision of broadcast news. Specifically, the 1990 Act restricted the maximum ownership of a nominated news provider<sup>48</sup> to 20% and each nominated news provider was only permitted to own up to 50% of a regional Channel 3 licence. The 1996 Act then made further provision for all holders of regional Channel 3 licences to, as far as possible, appoint the same (single) news provider. The purpose of this was to ensure that high quality national and international news was carried across all Channel 3 regions.
4. The 1990 Act placed ownership (and other) restrictions on direct satellite services holding UK licences. National newspapers could not hold more than a 20% stake in a UK licensed broadcasting satellite channel. However, no such restriction was placed on newspapers owning non-UK licensed direct

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<sup>48</sup> The Independent Television Commission nominated news providers who would be eligible to provide news programmes for holders of regional Channel 3 licences.

satellite services (eg Sky). The 1990 Act imposed specific prohibitions on the holding of broadcasting licences by certain classes of owners, for example religious bodies, local authorities, political parties, advertising agencies. Restrictions were also imposed on those outside the European Economic Area (EEA). These were expanded by the 1996 Act but did not apply to cable and satellite services.

5. The position in relation to cross-media ownership before CA03 was as follows:<sup>49</sup>
- (a) national newspaper owners were tightly limited in their holdings in terrestrial TV and radio, and in domestic satellite broadcasters. Within each category they could hold up to 20% of one licence, and then up to 5% of any others. They were allowed full control of non-domestic satellite broadcasters ‘in order to encourage investment in an uncertain and high-risk enterprise’;
  - (b) local newspaper owners were less tightly controlled, being allowed to own regional TV or local radio broadcasters, provided there was no significant overlap between the licence area and the newspaper’s circulation area;
  - (c) national TV and radio (and regional Channel 3) broadcasters were limited to a 20% stake in national newspapers and non-domestic satellite licences; and
  - (d) there were no cross-media restrictions on ownership cable services (other than that satellite providers could not own more than 20% of a terrestrial TV or national radio licence).

### ***The development of the media plurality consideration in CA03***

6. CA03 is a wide-ranging piece of legislation and, in relation to media ownership, its purpose was deregulatory while maintaining sufficient protections for the plurality of media ownership. According to Tessa Jowell MP, at that time Secretary of State for Culture, Media and Sport, the policy objective of CA03 was to: ‘preserve plurality of media ownership while not placing unnecessary and unreasonable restrictions on growth and the workings of the market.’<sup>50</sup> A government briefing note captures this intention, and emphasises the importance of a diversity of media content from a plurality of sources:

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<sup>49</sup> This was summarised in the [Leveson Report](#), Volume 1, Part C, chapter 4, paragraph 3.15.

<sup>50</sup> [Leveson Report](#), Volume 3, Part I, chapter C, paragraph 5.11, (page 1,280).

Our democracy and our cultural vitality depend on the availability of a range of different media voices, views and styles. The ownership of our newspapers, TV and radio is therefore of the utmost importance. That is why the government is concerned to ensure that citizens can receive a diversity of media content from a plurality of sources.

Diversity is about having a wide range of content and in the White Paper, a New Future for Communications, we set out the commitments to public service broadcasting and positive content regulation that we believe will be sufficient to ensure this diversity. 'Plurality is not about content but the source of that content, the 'voice' behind it – the owner. A plurality of voices should: –

- ensure no individual has excessive control over the democratic process;
- provide a plurality of sources of news and editorial opinion, preserving the culture of dissent and argument on which our democracy rests;
- prevent the emergence of any one source able to control the news agenda by the inclusion / omission of particular stories;
- maintain our cultural vitality by ensuring that different companies exist to produce different styles of programming and publishing, each with a different look and feel.

We therefore need regulation that is specifically directed to ensure plurality and that is why we have imposed rules on media ownership.<sup>51</sup>

7. While restrictions on foreign ownership, among other restrictions, were removed at that time, the current law (as set out in CA03) retains specific restrictions on cross-media ownership relating to ownership of Channel 3.<sup>52</sup> Of particular importance are the rules concerning national cross-media ownership between newspapers and ITV, ie the 20/20 rule (see paragraph 1.1(a)).

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<sup>51</sup> [Leveson Report](#), Volume 3, Part I, chapter C, paragraph 5.12, (page 1,281).

<sup>52</sup> The chronology of events which resulted in them not applying to Channel 5 is set out in paragraph 5.24 of chapter 5 of Part I of the [Leveson Report](#).

8. The government initially considered that given these quantitative restrictions their policy objective could be met without introducing a media plurality consideration into the Act. Lord Puttnam disagreed and introduced an amendment to the Communication Bill.<sup>53</sup> When introducing the amendment, Lord Puttnam emphasised its consistency with the government's policy objective by quoting the ministerial statement made at the introduction of the Communications Bill:

Our key aim is to ensure that there is a range of competing voices available to citizens so that they are free to form their own opinions... I believe that such a concentration in one voice would also be harmful to politics, because it could create a media owner so powerful that they could exercise direct influence over political decisions.<sup>54</sup>

9. Support for Lord Puttnam's amendment saw the government accepting the benefit of a media plurality public interest test alongside the 20/20 rule. The government, however, introduced its own amendment, which is now contained in section 58(2C) and 58A of the Act. In doing so Lord McIntosh, speaking for the government, addressed the question of the practical effect of these provisions and emphasised the fact that it would allow judgments to be made in the particular circumstances of the case at hand, thereby being flexible enough to deal with changes taking place in the market over time:

The noble Lord, Lord Puttnam, asked whether this test would 'effectively rule out' a major national newspaper owning Channel 5. The answer is that the test will ensure that the Secretary of State can investigate any merger which threatens plurality. It will clearly prevent unacceptable levels of cross-media dominance. But it is inherent in the nature of a test that one cannot predict the

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<sup>53</sup> The text of the amendment initially debated was:

MEDIA PLURALITY PUBLIC INTEREST CONSIDERATION

(1) section 58 of the Enterprise Act 2002 (c. 40) (specified considerations) shall be amended as follows.

(2) After subsection (2) there shall be inserted—

'(2C) The public interest in—

(a) the maintenance of a range of media owners and voices sufficient to satisfy a variety of tastes and interests;

(b) the promotion and maintenance of a plurality of broadcast media owners, each of whom demonstrates a commitment to the impartial presentation of news and factual broadcast programming; and

(c) the promotion and maintenance, in all media including newspapers, of a balanced and accurate presentation of news, the free expression of opinion and a clear differentiation between the two; is specified in this section.'

(3) In subsection (3), after the words 'any consideration', there shall be inserted '(other than the consideration specified in subsection (2C)).

<sup>54</sup> [Hansard report of 5 June 2003](#) in which the amendment that inserted section 58(2C) of the Act was moved (from column 1,431).

outcome in advance of any individual case. It will be necessary to analyse and consider all the relevant circumstances at the time on a case-by-case basis.<sup>55</sup>

### ***The current rules on cross-media ownership***

10. The current rules on cross-media ownership are set out in section 391 of CA03. They are as follows:
  - (a) the national cross-media ownership rule: which prohibits a newspaper operator with a market share of 20% or more of newspaper circulation from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20% (the 20/20 rule);
  - (b) the Channel 3 appointed news provider rule: which acts so as to require regional Channel 3 licensees to appoint a single news provider among them. Individuals or organisations disqualified from holding a Channel 3 licence are also disqualified from being the Channel 3 appointed news provider;
  - (c) the media public interest considerations: which allow the Secretary of State to intervene in a merger involving a broadcaster and/or a newspaper enterprise if certain conditions are met;
  - (d) the disqualified persons restrictions: which prevent certain bodies or persons from holding any broadcast licences, others from holding certain kinds of broadcast licences, and still others from holding broadcast licences unless Ofcom has determined that it is appropriate for them to do so.
  
11. Following its 2015 review of these rules primarily related to plurality, Ofcom concluded that:
  - (a) the national cross-media ownership rule still plays an important role within the current framework, as it secures a certain level of plurality beyond the BBC and limits the potential for a consolidated entity to exert undue influence;
  - (b) the appointed news provider rule also remains necessary as it guarantees a degree of plurality in wholesale news provision and ensures that the appointed Channel 3 news provider is of sufficient scale to compete; and

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<sup>55</sup> House of Lords [Hansard](#), volume 650, column 915, 2 July 2003.

(c) the media public interest considerations serve as an important backstop, allowing intervention in media mergers (at the discretion of the Secretary of State) and has the benefit of being a targeted rather than a blanket intervention.<sup>56</sup>

12. Ofcom therefore recommended that each of the rules should be retained, although noted that the longer term justification for the rules may become less clear if the use and importance of TV news and newspapers continues to decline.<sup>57</sup>

### **Previous application of the media plurality consideration**

13. Both the Explanatory Notes to CA03 and the DTI Guidance explain that the media plurality consideration contained in section 58(2C)(a) of the Act is ‘concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons’.<sup>58</sup> The DTI Guidance expands on this, echoing the policy objective of CA03:

It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality.<sup>59</sup>

14. Our interpretation of these statements in terms of our assessment of the media plurality consideration is set out further in chapter 7.

### ***Application by the CC***

15. The first and only time the media plurality consideration has been considered in a phase 2 merger inquiry was by the CC in relation to the BSkyB/ITV merger in 2007. This involved the acquisition by Sky (then BSkyB) of a 17.9% stake in ITV Plc, in circumstances where the 20/20 rule prevented any significant further acquisition of shares. In its report, the CC noted the Explanatory Notes, DTI Guidance, and statements in the House of Lords during the debates relating to the Communications Bill in 2003.
16. The CC concluded that plurality of control within the media is a matter of public interest because it may affect the range of information and views

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<sup>56</sup> [2015 Media Ownership Report](#), paragraph 1.11.

<sup>57</sup> [2015 Media Ownership Report](#), paragraph 1.12.

<sup>58</sup> The [Explanatory Notes, paragraph 802](#) (in general paragraphs 802 to 811).

<sup>59</sup> The [Explanatory Notes](#), paragraph 7.7.

provided to different audiences. The CC also considered the interaction between the regulation of broadcasters and plurality:

We note that the regulation of media enterprises in relation to plurality and impartiality are distinct. Impartiality relates to the fair and balanced treatment of differing viewpoints in relation to particular news stories. However, it does not address the relative prominence given to each story. In our view, it is a matter of public interest that decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives.<sup>60</sup>

17. Ultimately the CC, while finding a substantial lessening of competition, concluded in relation to plurality that:

Given the extent of the influence conferred on BSkyB by its acquisition of a 17.9 per cent shareholding in ITV, we concluded that the regulatory mechanisms, combined with a strong culture of editorial independence within TV news production, were likely to be effective in preventing any prejudice to the independence of ITV news. We did not therefore expect BSkyB's ability materially to influence ITV to have an adverse effect on the plurality of news relative to the position absent the acquisition. We therefore concluded that the acquisition would not materially affect the sufficiency of plurality of persons with control of media enterprises servicing audiences for news.<sup>61,62</sup>

18. The CC was not, therefore, required to reach a conclusion on the sufficiency of plurality following the acquisition by BSkyB.
19. The CAT subsequently overturned the CC's decision on plurality,<sup>63</sup> but the CAT's judgment was then itself overturned on appeal in relation to the interpretation and application of section 58A of the Act by the Court of Appeal.<sup>64</sup>

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<sup>60</sup> While the Court of Appeal considered the interpretation of section 58A it did not consider the interpretation of plurality in general. The CAT similarly focused on the interpretation of section 58A.

<sup>61</sup> [Paragraph 41](#).

<sup>62</sup> This conclusion was upheld on appeal to the Court of Appeal.

<sup>63</sup> [Virgin Media, Inc v \(1\) Competition Commission \(2\) Secretary of State for Business, Enterprise and Regulatory Reform \[2008\] CAT 25](#).

<sup>64</sup> [Virgin Media, Inc v \(1\) Competition Commission \(2\) Secretary of State for Business, Enterprise and Regulatory Reform \[2010\] EWCA Civ 2](#).



***Application by Ofcom (prior to the Transaction)***

20. The media plurality public interest test was considered at phase 1 by Ofcom in 2011 in relation to News Corp's bid to acquire the shares of Sky it did not own (News Corp/Sky), and in 2012 in relation to the acquisition of Guardian Media Group's radio stations (Real and Smooth) by Global Radio (Global/GMG).<sup>65</sup>
21. In News Corp/Sky Ofcom discussed both the 'static effects' of the proposed acquisition on plurality immediately after the transaction and the 'dynamic effects' of the proposed acquisition. Ofcom's advice taking account of the static effects was for the Secretary of State to make a reference to the CC for a phase 2 review.<sup>66</sup> Ofcom's report also expressed concerns about the statutory framework, in particular that it only applies in relation to specific corporate transactions. Ofcom highlighted that if a transaction is found not to operate against the public interest in relation to plurality, there is no subsequent opportunity or mechanism to address or consider any plurality concerns that may emerge in the future. It recommended the government consider undertaking a wider review of the statutory framework.<sup>67</sup>
22. In Global/GMG, Ofcom concluded that as the parties' sourced their UK-wide news content from the same wholesale provider the transaction would have only a limited effect in relation to UK-wide news. In relation to local news Ofcom did identify concerns in North Wales and Cardiff, but while there was a reduction in number of media owners there was a variety of other platforms including TV and newspapers.<sup>68</sup> The Secretary of State, following Ofcom's advice, decided not to make a reference for a phase 2 review on media plurality grounds. In conducting its assessment Ofcom applied three factors: availability, consumption and impact. These form a key part of the measurement framework subsequently developed by Ofcom, discussed at paragraph 30.

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<sup>65</sup> Ofcom, *Report on public interest test on the acquisition of Guardian Media Group's radio stations (Real and Smooth) by Global Radio*.

<sup>66</sup> Ofcom, *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, paragraph 1.57.

<sup>67</sup> Ofcom, *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, paragraph 1.64.

<sup>68</sup> Ofcom, *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, paragraphs 127 to 138.

## Consideration of media plurality by Lord Justice Leveson and subsequent developments

### *The Leveson Inquiry*

23. In July 2011 the Prime Minister announced a two part inquiry investigating the role of the press and police in the phone hacking scandal. Lord Justice Leveson was appointed as Chairman of the inquiry (the Leveson Inquiry).<sup>69</sup> The Leveson Inquiry examined the culture, practices and ethics of the press and, in particular, the relationship of the press with the public, police and politicians. Of particular importance in relation to the media plurality consideration, the Leveson Inquiry terms of reference required Lord Justice Leveson to make recommendations for:
- (a) a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from government, while encouraging the highest ethical and professional standards; and
  - (b) how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities, including parliament, government, the prosecuting authorities and the police.<sup>70</sup>
24. Lord Justice Leveson set out in his report a number of conclusions and recommendations in relation to media plurality and cross-media ownership.<sup>71</sup> These included:
- (a) affirming and noting the broad consensus around Ofcom's definition of the desired outcome of a plural market as:
    - (i) ensuring there is a diversity of viewpoints available and consumed across and within media enterprises;
    - (ii) preventing any one media owner or voice having too much influence over public opinion and the political agenda;<sup>72</sup>
  - (b) concluding that online distribution should be included in any market assessment and that the BBC should also be included in any measure of

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<sup>69</sup> On 1 March 2018 the Secretary of State confirmed that Part II of the Leveson Inquiry would not be going ahead.

<sup>70</sup> [Leveson Report](#), Volume 1, Part A, chapter 1, paragraph 1.3 (page 5).

<sup>71</sup> See, in particular, [Leveson Report](#), Volume 3, Part I, chapter 9.

<sup>72</sup> [Leveson Report](#), Volume 3, Part I, chapter 9, paragraph 1.3.

plurality, but noting the high degree of editorial independence within the BBC arising from its governance arrangements;<sup>73</sup>

- (c) concluding that there is no single measure that will provide an adequate picture of plurality. Lord Justice Leveson noted the complexity of the Ofcom model and recommended Ofcom and the government should work with industry on a measurement framework in order to achieve as great a measure of consensus as is possible on the theory of how media plurality should be measured before the measuring system is deployed;<sup>74</sup>
- (d) recommending that Ofcom carry out a consultative process designed to identify indicative levels of the various metrics that it was proposing to use that would give rise to plurality concerns. In doing so, Lord Justice Leveson recommended that the levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns (noting that he was not qualified or required to give a view on what those levels should be).<sup>75</sup>

25. As to the circumstances where a problematic loss of plurality could occur Lord Justice Leveson concluded:

There are very few existing mechanisms to protect that plurality. Obviously competition law applies in media markets, which should prevent any abuse of a monopoly position. But it must be the case that a problematic loss of plurality could occur without necessarily giving rise to competition concerns.<sup>76</sup>

26. As to the relationship between the press and politicians, Lord Justice Leveson concluded:

Taken as a whole, the evidence clearly demonstrates that, over the last 30 to 35 years and probably much longer, the political parties of UK national government and of UK official Opposition, have had or developed too close a relationship with the press in a way which has not been in the public interest. In part, this has simply been a matter of spending a disproportionate amount of time, attention and resource on this relationship in comparison to, and at the expense of, other legitimate claims in relation to the conduct of public affairs. In part, it has been a matter of going too

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<sup>73</sup> [Leveson Report](#), Volume 3, Part I, chapter 9, paragraphs 2.11 and 2.12.

<sup>74</sup> [Leveson Report](#), Volume 3, Part I, chapter 9, paragraphs 3.8 and 3.9.

<sup>75</sup> [Leveson Report](#), Volume 3, Part I, chapter 9, paragraph 4.19.

<sup>76</sup> [Leveson Report](#), [Executive Summary](#), paragraph 140.

far in trying to control the supply of news and information to the public in return for the hope of favourable treatment by sections of the press, to a degree and by means beyond what might be considered to be the fair and reasonable (albeit partisan) conduct of public debate.<sup>77</sup>

27. Lord Justice Leveson also made observations and recommendations in relation to the content which should be considered relevant to media plurality and sufficiency. We address and consider in more detail a number of the observations and recommendations made by Lord Justice Leveson where relevant in our final report.

### ***Developments following the Leveson Inquiry***

28. Following the Leveson Inquiry, the government issued a consultation on media ownership and plurality in July 2013.<sup>78</sup> The consultation took Lord Justice Leveson's recommendations as a starting point. In advance of the government's response to this consultation the House of Lords Select Committee on Communications published a report on media plurality in February 2014 (the House of Lords report).<sup>79</sup> The government's response to its consultation also included a response to the House of Lords report. This was published in August 2014 (the Media Ownership and Plurality Report).<sup>80</sup>
29. The government's Media Ownership and Plurality Report commissioned Ofcom to develop:
- a suitable set of indicators to inform the measurement framework for media plurality. These indicators will subsequently allow for the first ever baseline market assessment of media plurality in the UK to be conducted.
30. This led to the publication by Ofcom of its measurement framework for media plurality (the Ofcom measurement framework) in November 2015.<sup>81</sup> This is discussed in detail chapter 7 of our final report. There has not, to date, been a 'baseline' market assessment of media plurality in the UK.
31. The difficulties of undertaking an assessment of the sufficiency of plurality were described by Ofcom in its Media Plurality Advice from 2012:

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<sup>77</sup> Leveson Report, [Executive Summary](#), paragraph 117.

<sup>78</sup> [Government Media Ownership and Plurality consultation](#).

<sup>79</sup> [House of Lords Select Committee on Communications report on media plurality](#).

<sup>80</sup> [Government Media Ownership and Plurality Report](#).

<sup>81</sup> [Ofcom measurement framework](#).

5.117 An assessment of sufficiency at **any point in time** is challenging as it requires a subjective judgement. Further:

- **There is neither UK case law nor international precedent:** UK case law does not relate to non-merger situations. Most countries that regulate plurality use mergers as a trigger for regulatory action.
- **There is no analytic test analogous to the economic criteria used to assess market power:** Whereas market power can be assessed by reference to the ability to price independently of competition (the SSNIP test<sup>45</sup>), there is no comparable analytic test for levels of influence.
- **There is no single, accepted measure for plurality nor consensus as to where the level should be set.** There are challenges in setting metric thresholds to quantify sufficiency (akin to our discussion of metrics-based triggers). Given the importance of contextual factors, and the associated exercise of judgement, there is unlikely ever to be a crisp and unambiguous definition of sufficiency.

5.118 Looking ahead, it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and unpredictable. What is considered sufficient or not will vary with time and needs to be considered in reference to the broad market and political context of the times. Notions of sufficiency today are likely to be somewhat different from those of ten years ago, or ten years hence. As testimony to the pace of change, in 2002 Google News and Facebook had yet to launch, and now they are two of the three most-used online sources for news.

32. Ofcom concluded that it was ultimately for parliament to consider whether it can provide guidance on how sufficiency should be defined and that, absent such guidance, it would have to be left to the discretion of the reviewing body to reach a judgement on sufficiency and whether the status quo was sufficient or not.<sup>82</sup>

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<sup>82</sup> [Ofcom Media Plurality Advice](#), paragraphs 5.121 and 5.122.

## Appendix E: Online news

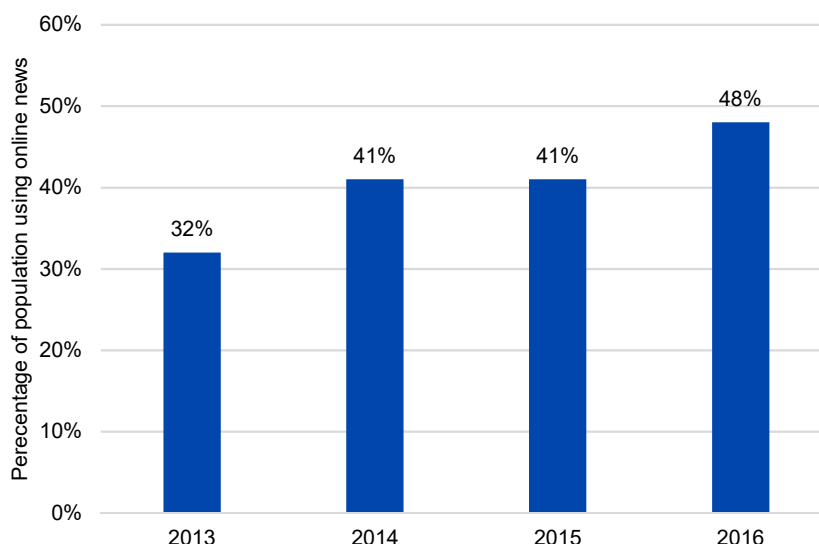
### Introduction

1. This appendix provides an overview of online news consumption in the UK. It focuses on whether the growth of online news is likely to dilute the influence of traditional media outlets, notably those owned by the Parties. To address this question, we considered the key factors that are likely to drive the impact of online news on audiences, and the extent to which the distribution of news online can dilute the effect of traditional media outlets. These are:
  - the proportion of the population who uses online news;
  - the share of traditional news providers in news consumption online;
  - the extent of multi-sourcing by online news users;
  - the growth and positioning of online-only news sources;
  - the impact of politicians and commentators on news discussions online;
  - the ability of news outlets to set the agenda online;
  - the way users engage with online news.
2. We assessed the first three factors mostly through quantitative analysis based on various sources, and we explored the last four factors using a combination of quantitative and qualitative analysis.

### The proportion of the population who use online news

3. Ofcom's News Consumption Survey (NCS) shows that, in 2016:
  - 48% of UK consumers used online news in 2016, up from 32% in 2013 when Ofcom's NCS began (Figure 1).

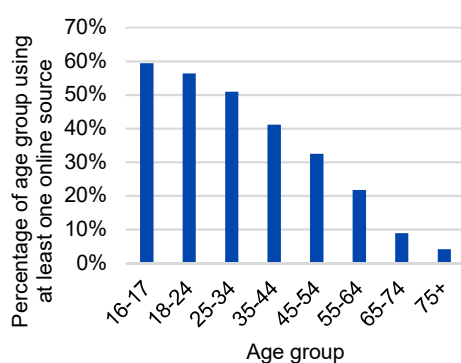
**Figure 1: Proportion of UK consumers who use online news**



Source: Ofcom [NCS 2016](#).

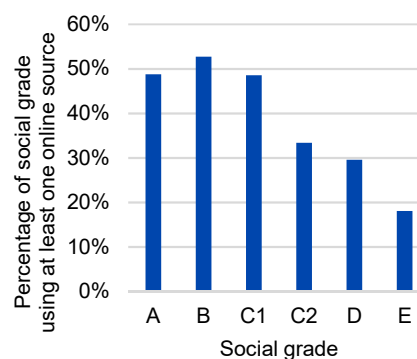
- The people who did not use online news (the remaining 52%) tended to be older (see Figure 2) and to belong to lower social grades (see Figure 3).

**Figure 2: Share of respondents who use at least one online source, by age group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

**Figure 3: Share of respondents who use at least one online source, by social grade**

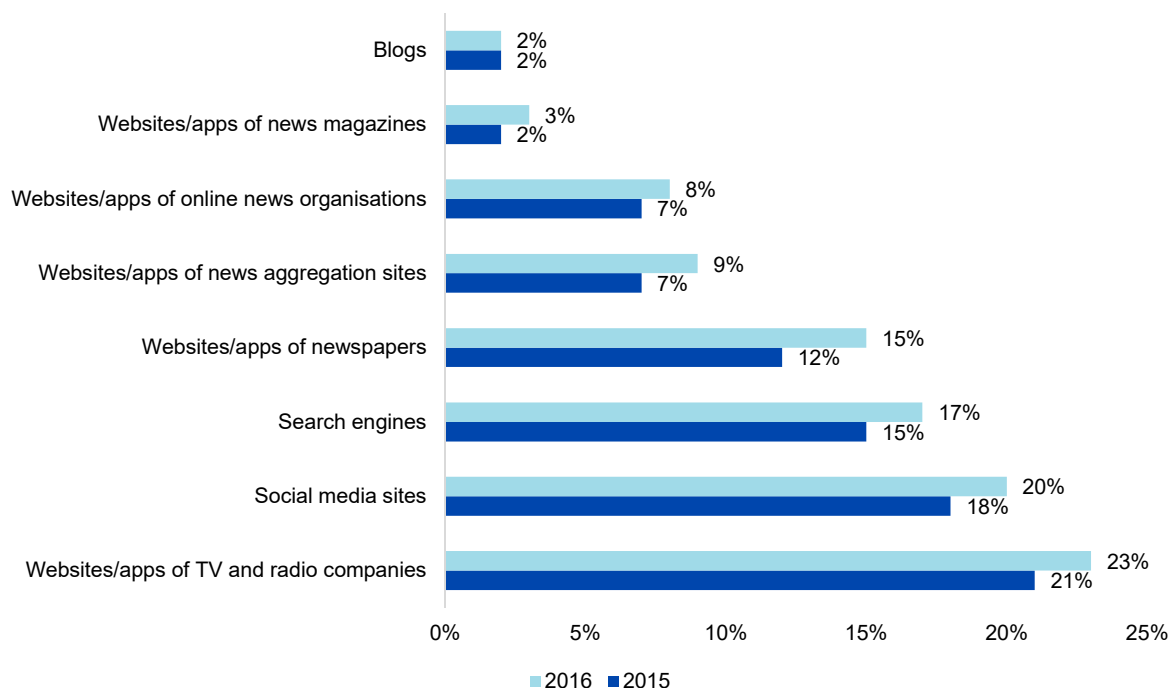


Source: CMA analysis of Ofcom [NCS 2016](#) data.

- 30% of UK consumers use an intermediary to access online news<sup>83</sup> (that is around two thirds of people who use online news). More specifically, 20% of UK consumers use social media, and 17% use a search engine (Figure 4).<sup>84</sup> The remainder of online news users access specific news sources directly.

<sup>83</sup> In 2016. Question 3b of NCS: *You said you use the internet or apps or alerts (on any device) for news nowadays. Which of the following do you use to get news?* Reporting results for respondents who stated they used social media or a search engine or an aggregator (785 respondents). Base: all who consume news (2,659).

<sup>84</sup> There is some overlap between the set of people who use social media and the set of people who use a search engine, with the implication that the proportion of people who use an intermediary is less than the sum of the proportions who use social media and a search engine, respectively.

**Figure 4: Types of news sources used online among all adults**

Source: Ofcom [NCS 2016](#).

- Readers of the print versions of News Corp titles use online news to the same extent as the population average, and viewers of Sky News TV use online news to a greater extent. More specifically: 40% of survey respondents who said they read News Corp titles also said they use at least one online source for news; and 58% of survey respondents who said they use Sky News also said they use at least one online source for news. By way of comparison, the proportion of survey respondents in the whole sample who said they use at least one source of online source is 40%.<sup>85</sup>
4. Overall, these results show a mixed picture in terms of the penetration of online news. While online penetration is growing, in 2016 roughly half of the population still did not use online news at all. Also, roughly one third of those who used online news do not use any intermediaries and continue to access the websites or apps of specific news organisations directly, implying that they engage with news organisations online in much the same way as on more traditional platforms. For example, this was noted by the Daily Mail and General Trust Group (DMGT):

<sup>85</sup> Ofcom estimates that the proportion of the **population** who uses online news is 48%, but this includes the effect of reweighting in the survey sample. Before reweighting, the proportion of **survey respondents** who use online news is 40%.



We find our online audience falls into two different behaviour categories. First, online readers who come direct to our sites ... and engage in similar ways as with a newspaper with equivalent interactions per month and for comparable amounts of time per day. There is a second category of visitors – those who come to us or engage with our content via search, social media and third parties. Such readers engage less frequently, visiting the site less often and for shorter duration per interaction.

5. As such, it is important not to conflate the use of online news with the use of intermediaries. The potential effects of intermediaries on news consumption – in terms of facilitating multi-sourcing or the disintermediation of news production – concern less than a third of all UK consumers.

## **The share of traditional news organisations in news consumption online**

6. We used two sources of data on news consumption online: the MMX database of comScore, and information from intermediaries.

### ***comScore data***

#### *The comScore methodology*

7. comScore delivers online audience measurement across different devices (PC, tablet, mobile) and for different types of content (including page content, apps, video). comScore is endorsed by UKOM, the body that sets and governs the UK standard for the online industry.
8. comScore uses a hybrid approach measuring both panel data and census data:
  - the panel are recruited respondents who install metered software on their devices. The panel size in the UK is 90,000 desktop users and 8,000 mobile users (as of November 2017);
  - census data from comScore ‘tags’ that media owners apply to their content.
9. The panel and census data are unified by comScore and then deduplicated (so a user using both desktop and mobile is not counted twice) to produce an overall view of individual consumer behaviour online. We used comScore’s MMX Multi-Platform data (this comprises of data from desktop, smartphone and tablet data sources).

10. We considered the extent to which we can place weight on comScore data and identified the following limitations:
- the methodology is very complex and combines modelling and direct measurement. We consider that the modelling relies on assumptions (based on insights coming from panel and enumeration data sources) which we consider as less robust than direct measurement;
  - the panel based methodology could suffer from the same limitations as online panels in general. In particular, results may not be not representative of the target population as online panellists tend to be heavier internet and technology users;
  - not all web entities are measured through census data as publishers may choose not to tag all of their web pages, apps and videos. In addition, the tags applied are at the discretion of the publisher making direct comparisons between sites difficult.
11. comScore commented on these limitations:
- in relation to the modelling and panel based methodology issues we identified, comScore stated that it integrates census data with sample projections to obtain the most robust estimates of digital audiences for each media entity reported in comScore results. comScore noted that if solely used, both the census and the panel data suffer from limitations which are overcome by an integration of the panel and census data into a consistent outcome. For example:
    - panel (projected sample) data - this provides cookie-to-person conversion factors at the site level; it allows for identifying and quantifying the extent of coverage gaps; and it provides demography;
    - census data - this introduces increased granularity and stability for smaller media entities; it can quickly cover new platforms and deliver platform de-duplication insights; it assures that all activity is credited and provides an opportunity for calibration.
  - comScore also noted that, in relation to the possibility that panels are not representative, it applies intensity weighting to panel data desktop use to align the desktop panel intensity with the actual intensity observed in the population through census data in the given month. The intensity of internet usage observed in the UK desktop panel is lower than is the population average obtained from the UK census data.

- In relation to content tagging, comScore noted that ideally all content would be tagged, such that audience estimates can be based on both census and panel data. However, comScore noted that there are many reasons that content is not fully tagged or not tagged at all. In these instances, comScore works with available information about the audience of the sites and apps (panel and census data feeds) and uses its Unified Digital Measurement (UDM) methodology to provide a complete and consistent picture about the digital audiences on these sites. In instances where the content is not fully tagged, comScore stated that it calculates the census tag coverage for each individual media entity reported in the results to overcome the challenge of different levels of tagging among publishers. comScore stated that its industry approved UDM methodology then works with the tagging coverage information to account for the non-tagged part of publisher's content and through it can report on the complete audience of the entity in the final results. comScore also stated that it closely collaborates with UKOM (see paragraph 12) and the Publishers Audience Measurement Company (PAMCo)<sup>86</sup> to help publishers get their content completely tagged. The websites or apps that are not tagged at all are measured through panel only (weighted sample projections) which, for sites with lower traffic, can be less robust than unified measurement based on both panel and census.
12. comScore is seen as the industry currency for measuring online activity. UKOM is the body that sets and governs the UK industry standard for online audience measurement.<sup>87</sup> UKOM told us that it hired statistical consultants to test that the algorithms used by comScore were appropriate and worked appropriately. UKOM stated that it chose comScore out of four tools to measure online activity and stated that comScore was the most consistent, robust and future proof method, while noting the limitations described above. UKOM stated that comScore will not return the same results as a publisher's inhouse measures, but noted that when publishers compared their inhouse measures with comScore the difference was 'tolerable.'<sup>88</sup>
13. Given these points, we consider that comScore is a useful tool for measuring online activity.

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<sup>86</sup> PAMCo, is the governing body which oversees audience measurement for the published media industry.

<sup>87</sup> UKOM.

<sup>88</sup> comScore stated that the reason why the same results may not be returned is because the main goal of comScore/UKOM data are to provide an estimate of live users, volume, and behaviour, and not digital traffic statistics that are obtained from inhouse measures.

### ***The level of measurement***

14. Publishers have the option of segmenting their ‘digital domains’ on comScore to obtain audience metrics for specific sections and levels. The hierarchy typically starts at the level of a publisher (eg News Corp) through to media titles (The Sun Online), down to individual channels (The Sun UK) and sub channels (The Sun News). Most media outlets in the UK identify a specific news section in this hierarchy, and this is the level our analysis focused on as it is most relevant for our assessment of media plurality. In cases where this level of disaggregation is not available, we report consumption figures at the closest level available (usually the whole title). We note that this approach may overstate the relative position of the titles who do not provide a detailed segmentation of their domain as all of their content will be included in our analysis. Conversely, websites that split content over many channels may have ‘news’ channels that do not include items such as business news, opinion and comment that other news sites include within a news tag. In Table 1 we provide details of the content included in the level we selected for each news provider, and an indicative estimate of the direction of the bias (ie if the level chosen is likely to include either more than just news content or not include a narrower range of news content compared to other sites).
15. Table 1 provides more information on the levels we have considered for the news providers for which we have undertaken analysis. We selected 20 news providers based on the largest news providers identified by Ofcom in its share of reference analysis, as well as smaller, alternative, online only sources.<sup>89</sup> We note the number of providers listed in comScore’s ‘News/Information’ category is much larger than the number of sources listed, and includes a number of sites not relevant to our analysis (eg weather websites).<sup>90</sup> Table 1 also reports on the level of unification. The degree of unification relates to the extent to which data collected from the panel can be unified with census data. In relation to the level of unification we consider that fully unified data is likely to be more reliable than more granular ununified data.
16. We note that Ofcom’s analysis looked at the top five providers only, because these providers had a generally consistent and comparable methodology.<sup>91</sup> Our analysis considered a wider range of providers, but may be less reliable

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<sup>89</sup> We ensured that where a single wholesale provider (for example Northern and Shell) owns several websites and/or apps in our analysis (for example, The Daily Star and The Express) statistics for these websites/apps are not double counted (for example, if The Daily Star were the media title and the Express a channel below that). In the case of The Daily Star and The Express both are media titles and are not nested within one another.

<sup>90</sup> In particular, comScore notes that the total minutes of recorded use for our selection of websites accounts for only around 25% of the total minutes measured in its ‘News/Information’ category.

<sup>91</sup> [Ofcom Public Interest Report](#), Figure 6.4.

given the two issues discussed above (inability to make direct comparisons at narrower levels of segmentation and incomplete unification).

**Table 1: Level of unification of comScore data used by the CMA**

<i>News provider</i>	<i>Publishers (P)/Media title (M)/channel (C)/subchannel analysed (S)</i>	<i>Nature of the content analysed</i>	<i>Direction of bias (i.e. does the level selected by CMA appear to have more than news content?)</i>	<i>Level of unification</i>
BBC	BBC News (C)	BBC News category includes (but not limited to): News Business, News Education, local news in the UK, News Entertainment, News in Pictures, News Politics, regional UK news, world news. Does not include Sports.	Assumed accurate. Includes news app.	Web: fully unified Web video: panel only Smartphone apps: fully unified Tablet apps: fully unified
ITV	ITV News (M)	No further information	Assumed accurate. Includes news app.	Web: fully unified Web video: not measured Smartphone apps: panel only Tablet apps: not measured
Sky	Sky News (C)	Includes news.sky.com, Sky News App, Sky News mobile, Sky News streaming. Also includes Sky News Arabia. Does not include Sports.	Potential slight overstatement- the inclusion of Sky News Arabia may include non-news content for a UK audience. Includes news app.	Web: Fully unified Web video: panel only Smartphone apps: fully unified Tablet apps: fully unified
Daily Mail	Mail Online- News (C)	No further splits. Does not include 'Mail Online- Debate' which is separate	Understatement- excludes debate and as such may exclude commentary and opinion pieces that may be included on other news websites. Does not include app.	Web: fully unified Web video: panel only Smartphone apps: not measured Tablet apps: not measured
Metro	Metro.co.uk News (C)	No further splits or information on content	Understatement- does not include app	Web: fully unified Web video: not measured Smartphone apps: not measured Tablet apps: not measured
The Sun	The Sun News (S)	Includes opinion, politics, UK and World	Understatement- does not include app.	Web: fully unified Web video: panel only Smartphone apps: not measured Tablet apps: not measured
The Times	Thetimes.co.uk (C)	No information or further splits	Overstatement- assumed to include all content on Times website, including non-news content such as sports. Includes app.	Web: fully unified Web video: panel only Smartphone apps: fully unified Tablet apps: fully unified

Guardian	Guardian News (C)	Includes home news, UK news, US news, world news. Does not include business news.	Understatement- does not appear to include business news like other news websites. May also not include comment/opinion pieces. Does not include app.	Web: partially unified Web video: not measured Smartphone apps: not measured Tablet apps: not measured Web:fully unified Web video: panel only
Mirror	Mirror Online- News (S)	No further splits	Understatement- does not include app.	Smartphone apps: not measured Tablet apps: not measured Web:fully unified Web video: panel only
Independent	Independent.co.uk- news (C)	No meaningful information included.	Understatement- does not appear to include comment and opinion pieces, or the app.	Smartphone apps: not measured Tablet apps: not measured Web:fully unified Web video: panel only
Evening Standard	Evening Standard News (C)	No further splits. A separate category not included (ES Comment is not reportable- too few users)	Understatement- does not appear to include business, comment and opinion pieces, or app.	Smartphone apps: not measured Tablet apps: not measured Web:fully unified Web video: panel only
Telegraph	Telegraph News (C)	No further splits. A separate category not included (Opinion- not reportable- too few users)	Understatement- does not appear to include business or comment and opinion pieces.	Smartphone apps: not measured Tablet apps: not measured Web:fully unified Web video: panel only
Express	Express.co.uk (M)	No meaningful splits. Appears to include a jobs section.	Overstatement- appears to include all content on the site (for example, sports). Includes app.	Smartphone apps: fully unified Tablet apps: fully unified Web:fully unified Web video: panel only
Star	Dailystar.co.uk (M)	No meaningful splits. Appears to include a jobs section.	Overstatement- appears to include all content on the site (for example, travel, style). Includes app.	Smartphone apps: fully unified Tablet apps: fully unified Web:fully unified Web video: fully unified
BuzzFeed	BuzzFeed.com (P)	Appears to include all content	Overstatement- appears to include all content on the site (for example, quizzes), includes app.	Smartphone apps: fully unified Tablet apps: fully unified Web:fully unified Web video: fully unified
Vice	Vice.com (M)	Appears to include all content	Overstatement- appears to include all content on the site, includes app.	Smartphone apps: fully unified Tablet apps: panel only No information
Financial Times	FT.com (M)	No meaningful further splits or information	Assumed accurate	Web:fully unified
HuffPost UK	Huffingtonpost.co.uk (S)	Appears to include all content	Overstatement- appears to include all content on the site (for example, lifestyle)	Web video: partially unified Smartphone apps: panel only

The Canary	Thecanary.co (P)	Appears to include all content	Assumed accurate	Tablet apps: panel only No information
Breitbart	Breitbart.com (P)	Appears to include all content	Assumed accurate. Includes app.	Web: fully unified Web video: panel only Smartphone apps: not measured Tablet apps: not measured

17. Based on comScore data we considered three different measures of the relative importance of different news sources: their reach, their share of consumption (measured based on the time spent by consumers on the different websites, mobile apps and desktop video), and the relative increase in their reach during major political events (such as the recent elections and the EU referendum).

### **Reach**

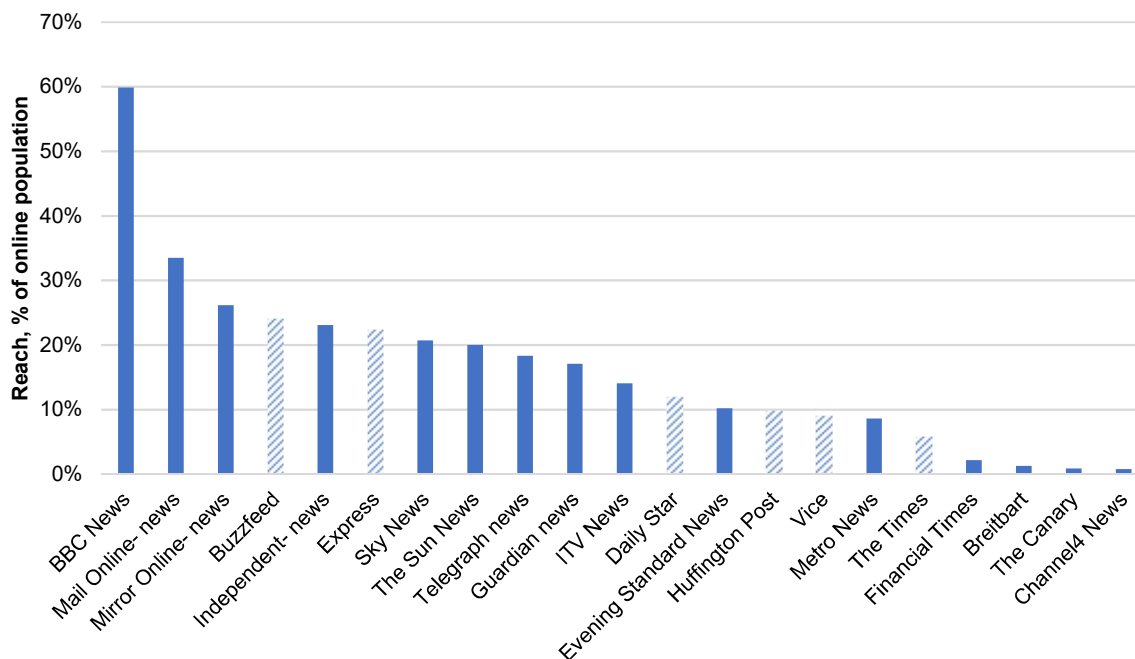
18. Figure 5 shows the average online reach of the news section of the major UK news providers (analysed at the level reported in Table 1) for the period January to August 2017 (the hatched bars mean that data is only available at the level of the title).<sup>92</sup> The Sun and Sky News have a reach of roughly 20% each, and The Times has a reach of 7%.<sup>93</sup>

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<sup>92</sup> We note that more recent comScore data is available but does not consider there have been material changes in terms of reach since August 2017.

<sup>93</sup> We note that the results are sensitive to the level of comScore data chosen - for example, The Sun Online (media title) had 29 million unique users in September 2017, a reach of 60%.

Figure 5: Online reach of selected news providers (January to August 2017)



Source: CMA analysis of comScore MMX Multi-Platform.

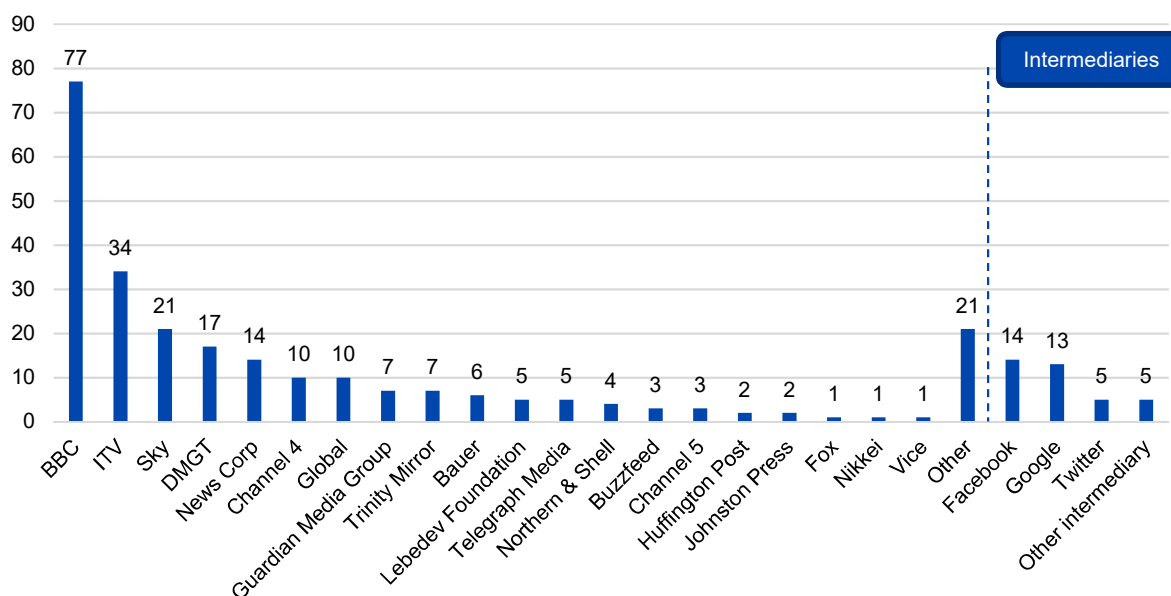
Note: hatched bars mean that information is only available at the level of the title.

Data for each news title relates to the media title/channel/sub-channel specified in Table 1.

19. For comparison, Figure 6 shows the cross-platform reach of UK news providers as measured by Ofcom based on the NCS. This comparison shows that newspapers tend to reach a larger share of the audience online than in the general population. Part of this difference may stem from differences in definition and measurement between the two sources: the NCS asks respondents to recall 'which sources they use for news nowadays' which may imply a regular engagement with news sources, whereas comScore registers a unique user for a website even if that user visits that website only once in a given month and for a brief period of time. Nevertheless, it is likely that part of that difference is 'real' in the sense that the distribution of news online tends to increase the relative reach of newspapers.
20. This is consistent with the finding that online news users tend to multisource more (see later). A number of news organisation also told us that this was the case: DMGT told us that it has been able to significantly expand its readership and brand through its successful operations in the online news arena; Trinity Mirror told us that its publishing reach had increased with the addition of online users, albeit it faced competition from other providers; the BBC pointed out that its broadcast content is more widely available and easier to access than ever before; The Guardian said that digital technology has enabled it to become a global news brand, reaching news audiences around the world.



Figure 6: Retail cross-platform audience reach of providers used 'nowadays' for news: 2016



Source: Ofcom [NCS 2016](#).

Base: All adults 16+ who use TV, printed newspapers, radio, internet, or magazines for news nowadays (2,659).

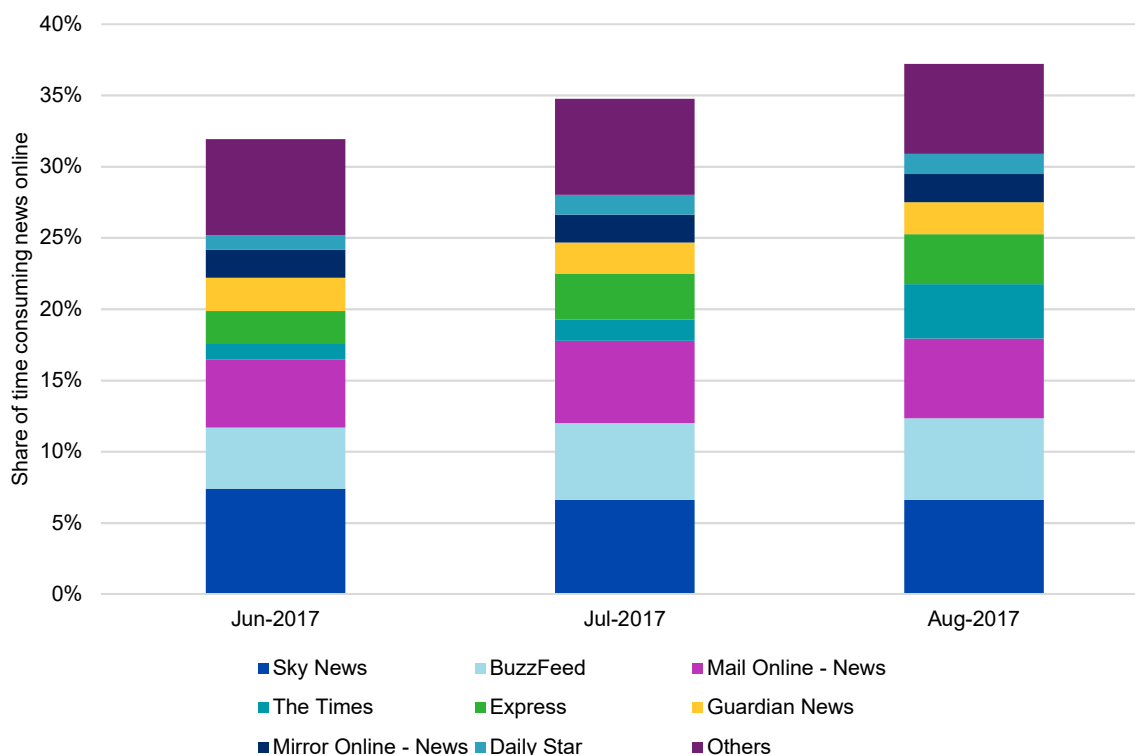
Notes: 'Google' contains all Google-named entities plus YouTube. 'Other intermediary' includes MSN, Yahoo, Feedly, Flipboard, News Now.

### Share of consumption by time spent

21. We considered shares of time spent online for the news providers at the level listed in Table 1. In August 2017, BBC News accounted for approximately 60% of news consumption online (measured by time spent for the 20 providers listed in Table 1). Figure 7 shows the shares of other news providers (provided their share exceeds 1%). Based on this metric, Sky News has the largest share of consumption online behind the BBC News, followed by The Mail Online, BuzzFeed and The Times. The relatively strong performance of Sky News on this metric is driven by the fact that users tend to use Sky News' services for longer periods of time compared to competitors (around 20 minutes per month, compared to around 10 to 15 minutes per month for titles such as The Times,<sup>94</sup> The Daily Mail and The Guardian, and around five minutes per month for The Sun).

<sup>94</sup> We note that the monthly usage of The Times increased significantly from August 2017, due to the inclusion of The Times mobile app under the TIMES.CO.UK channel.

Figure 7: Share of time spent consuming news online



Source: CMA analysis of comScore MMX Multi-platform.

Notes: the remainder of the share of time consuming news online in each month is attributable to BBC News.

Data for each news title relates to the media title/channel/sub-channel specified in Table 1.

The CMA notes that more recent comScore data is available but does not consider there have been material changes in terms of consumption since August 2017.

### *Reach 'uplift' during major political events*

22. We sought to measure the extent to which the reach of news organisations varied during major political events such as the 2017 general election and the EU referendum. We could interpret an increase in reach during such periods as indicative that a news organisation is seen as politically relevant outside its core audience.
23. Doing this analysis with comScore data was difficult because comScore only reports data on a monthly basis and therefore does not allow for the identification of short-term variations in reach or consumption. Nevertheless, we would expect significant changes over short periods of time to be reflected in monthly data. Table 2 reports the results of this analysis for selected providers. This shows that the majority of news sources see an increase in reach during major political events, with the exception of BuzzFeed and The Sun. Sky News saw the most significant uplift during the election period of the providers considered. The Independent and the BBC both saw a significant uplift in both periods.

**Table 2: Change in reach during major political events**

	Average reach in Mar-May 2016	Reach in June 2016	Difference (percentage points)	Average reach in Mar-May 2017	Reach in June 2017	Difference (percentage points)
BBC news	55%	61%	7%	60%	67%	6%
Mail online - news	33%	34%	1%	34%	36%	2%
Mirror online - news	23%	26%	3%	27%	32%	5%
Sky News	18%	23%	5%	19%	31%	12%
Express.co.uk	20%	26%	5%	24%	25%	2%
BuzzFeed.com	26%	23%	-3%	25%	23%	-2%
Independent.co.uk - News	20%	31%	11%	23%	31%	8%
The Sun news	4%	1%	-3%	27%	16%	-11%
Thetimes.co.uk	2%	2%	0%	6%	6%	0%
Thecanary.co	1%	1%	0%	1%	1%	0%
Breitbart.com	1%	3%	2%	1%	1%	0%

Source: CMA analysis of comScore data.

Notes: Data for each news title relates to the media title/channel/sub-channel specified in Table 1.

24. News Corp provided daily data on unique visitors to The Sun website for sample periods in 2016 and 2017, which allowed for a more granular analysis of short term variations in reach. This data indicates that the audience of the news section of The Sun website was broadly stable between the two weeks of the referendum and the elections and the weeks before.<sup>95</sup>

### ***Shares of news consumptions on intermediaries***

25. Measuring reach and consumption on intermediaries is difficult because intermediaries distribute news in different ways and collect different metrics of reach and consumption. For this reason we present results separately for the three most popular intermediaries for news: Facebook, Google (including YouTube), and Twitter.

#### ***Facebook***

26. The NCS indicates that Facebook is used for news consumption by 27% of those who use the internet for news (implying that it is used for news consumption by 13% of all news users in the UK). Measuring news consumption and engagement on Facebook is not straightforward because various metrics are available, with different interpretations. Also it is not possible to distinguish news content from the other content posted by publishers, which means that our analysis may overstate the relative position of publishers who post a high share of non-news content. Finally, it is not possible to identify UK-based users with sufficient reliability for the period considered, which means that our analysis may overestimate the relative position of titles with an international profile.

<sup>95</sup> [X].

27. Notwithstanding these limitations, we considered the following metrics:

- (a) **Followers.** We used the number of followers of news organisations as a proxy for their reach. Figure 8 shows that as 1 October 2017 [X] has the largest number of followers by far, followed by [X], [X] and [X].

**Figure 8: Number of followers for news organisations (October 2017)**

[X]

Source: CMA analysis of Facebook data.

- (b) **Click throughs and impressions.** We used two proxies for the consumption of news through Facebook: the number of click throughs on links provided in original posts, and the number of impressions of posts on users' News Feeds.<sup>96</sup>

Figure 9 shows that the ranking between news organisations according to click throughs is very different from that presented for the number of followers. In general, [X]. This is both [X] generate more posts relative to other news organisations, and because their posts attract more click throughs. [X] is the third most popular news organisation on Facebook according to this metric, while [X] and [X] generate low levels of click throughs.

**Figure 9: Number of click throughs on links posted on Facebook (12/07/17 to 31/08/17)**

[X]

Source: CMA analysis of Facebook data.

Figure 10 shows the same figure for impressions. The ranking is topped by [X].

**Figure 10: Number of impressions of posts on Facebook (October 2017)**

[X]

Source: CMA analysis of Facebook data.

- (c) **Likes and shares.** Finally, we considered the engagement metrics available on Facebook – likes and shares – as a proxy measure for the impact of the content on audiences. Figure 11 shows that newspaper publishers do relatively well on this metric, although the gap between them and the broadcasters is not as large as for click throughs.

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<sup>96</sup> An 'impression' of a post is recorded each time a user scrolls down his newsfeed and sees the post. If a user sees a post three times, this is counted as three impressions.

**Figure 11: Engagement metrics for news organisations (12/07/17 to 31/08/17)**

[X]

Source: CMA analysis of Facebook data.

28. Overall, these different metrics provide a complex picture of the relative weight of news organisations on Facebook. [X] has the largest audience measured by followers, but [X]. [X] is particularly good at making its followers click on its posts, whereas its performance in terms of other engagement metrics (likes and shares) is similar to that of other [X] publishers. [X] has a relatively large audience, but attracts low levels of click throughs and engagement. [X] plays a relatively minor role in news diffusion on Facebook. This might be because [X] content is behind a paywall, or because its audience does not use Facebook to a significant extent.

### Google

29. The NCS shows that, of the people who use the internet for news, 15% use the Google search engine for news, and 6% use Google News. That is, in the general population, 7% use the Google search engine for news, and 3% use Google News.
30. Google ranks results related to news based on signals specific to measuring the relevance of news articles. These news-specific signals include: 'freshness' (ie how recent and timely a given article is); measures of the website's overall quality with respect to news content; user activity (measures of user satisfaction with the results); and 'PageRank' (ie the number and quality of links that a page receives from other pages).<sup>97</sup> The results may also take account of the user's location.
31. The analysis of news consumption on Google was made difficult by the fact that there is no easy way of distinguishing searches related to news and current affairs from other searches. This is because many search terms are ambiguous and Google is not always able to determine the original intent of the user. However, to assist with our Inquiry, Google took a sample of searches initiated by UK users over 2017 and, within that sample, identified the subset of searches that involved impressions of domains listed in the Google News corpus (which is a list of sites that are included in Google News). Google then calculated a percentage of impressions for news organisations by calculating the number of impressions displayed on a search result page for a particular domain, divided by the number of impressions of all domains in the Google News corpus in the sample. Likewise, Google

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<sup>97</sup> Google told us that PageRank was less important for news-related searches than for other searches.

calculated a percentage of clicks by calculating the number of clicks on a search result page for a particular domain, divided by the number of clicks on all domains in the News corpus in the sample.

- 32. Table 3 shows the result of this analysis for the ten sites with the largest shares of impressions. The shares of impressions and clicks are low. This might be because there are tens of thousands of sites listed on the Google News Corpus, including some sites that have only a weak association with news (eg nme.com, comicbook.com, skysports.com, etc). For this reason the subset of searches identified by Google is likely to include many searches that are only remotely related to news and current affairs. Nevertheless, the relative position of news organisations should be less affected.
- 33. Based on this analysis, nine out of the ten publishers in the sample that had the most impressions and clicks were newspaper publishers, with The Sun being [redacted]. The domains of broadcasters did not account for as many impressions or clicks in the sample; bbc.co.uk is [redacted] most popular news source on Google, in terms of number of clicks in the sample, but Sky.com is only [redacted] most popular provider by share of clicks and ITV is in [redacted] position.

**Table 3: Estimated percentage of impressions for, and clicks on links to different domains in Google search results by UK users**

	<i>Share of impressions (%)</i>	<i>Share of clicks (%)</i>	
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

Source: Google.

- 34. Table 4 shows the share of impressions of different domains listed in the Google News corpus for specific, news-related search terms (in response to a sample of news-related searches requested by us). The majority of the highest ranking publishers are UK newspaper publishers, although some US publishers also rank high on the two search terms related to international news. The Sun is the [redacted] most frequently impressed publisher for people searching for results on ‘jeremy corbyn’, and the [redacted] for ‘theresa may’ and ‘terror attack’. This indicates that, even though the online version of The Sun







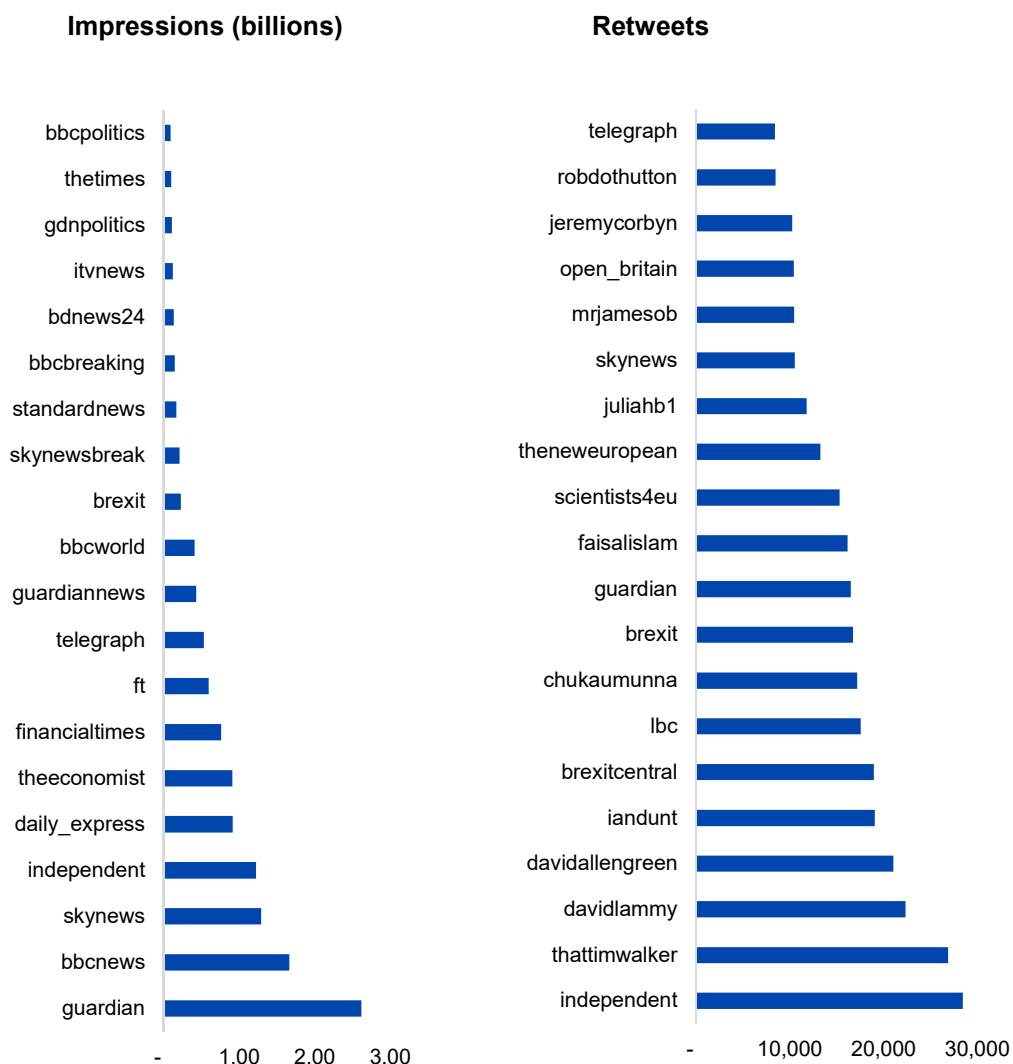
detailed search terms and queries used for this analysis). We also assessed results for specific search terms within these categories.

38. Due to data protection issues and the large amount of data that needed to be exported, we were not able to export every single relevant tweet. Instead, we used comprehensive author lists created by the Department for Communities and Local Government in our analysis. The total number of authors used in the analysis is 10,674.<sup>99</sup>
39. The relative ranking of news organisations and individuals vary depending on the topic, the period and the type of indicator considered. Figure 12 shows the number of impressions and retweets for posts related to Brexit in October 2017. Considering the number of impressions, all but two of the top tweeters are large UK-based news organisations. Sky News was the third most frequently impressed author for that query (The Times is in 19<sup>th</sup> position and The Sun in 157<sup>th</sup> position). Considering the number of retweets, a large number of the top authors are individuals or collectives. Sky News is the 15<sup>th</sup> most frequently retweeted author on that metric (The Times is in 91<sup>st</sup> position and The Sun is in 432<sup>nd</sup> position).

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<sup>99</sup> The lists we used were: advocacy groups (1,561 authors), journalists (4,977), MPs – Conservatives (250), MPs – Labour (240), MPs – other (67), national media (786), parliament (not members) (55) and regional media (2,761). There is some overlap between these lists, so the total does not add up to 10,674.

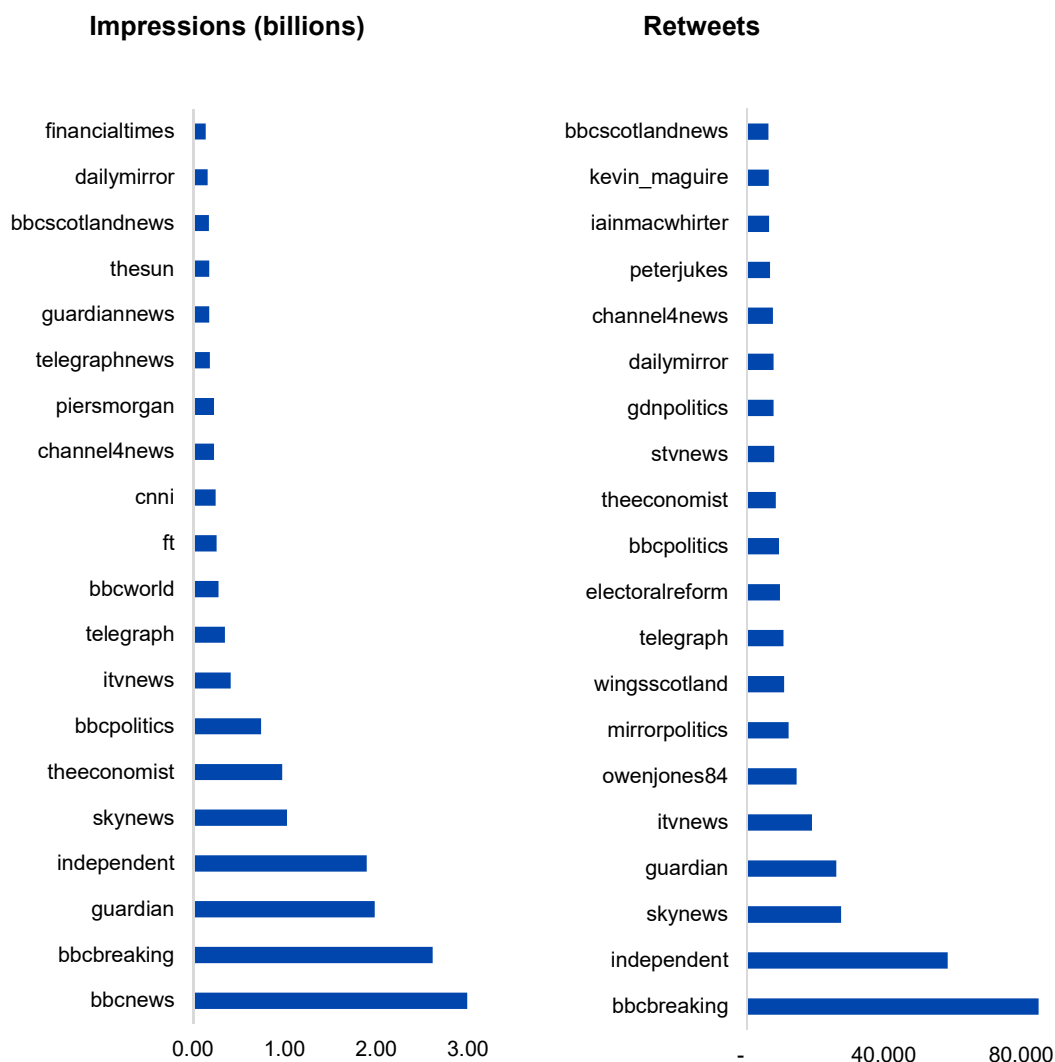
**Figure 12 Number of impressions and retweets for Twitter posts related to Brexit news (October 2017, top 20 authors)**



Source: CMA analysis of Brandwatch data.

40. Figure 13 shows the results of this analysis for tweets related to UK politics at the time of the 2015 general election. As for the Brexit query, the ranking by impressions is dominated by news organisations. The ranking by retweets features a larger number of individuals and commentators, although the largest contributors are also news organisations. Sky News is the fifth most important contributors by impressions and the third by number of retweets.

**Figure 13: Number of impressions and retweets for Twitter posts related to UK politics news (01/05/15-14/05/15, top 20 authors)**

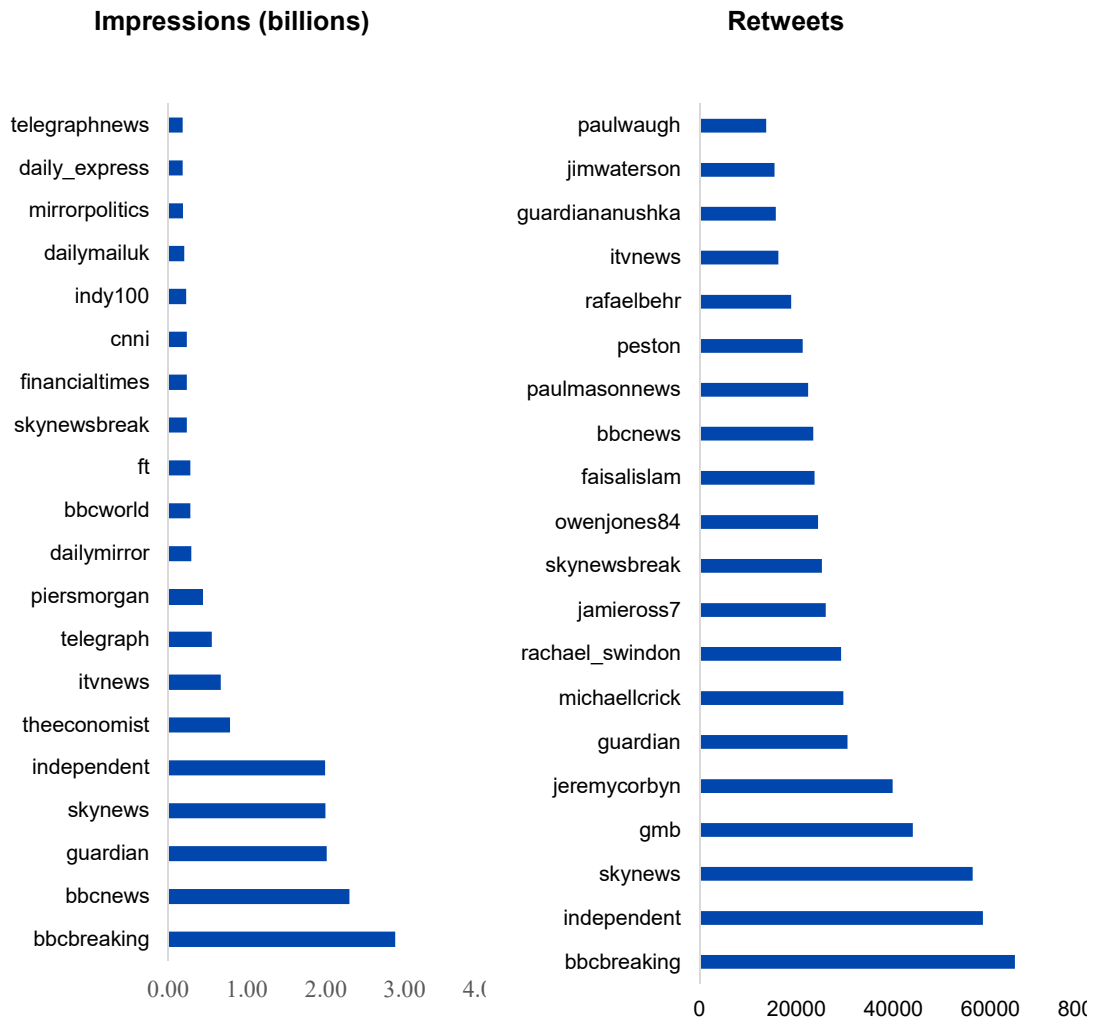


Source: CMA analysis of Brandwatch data.

41. Figures 14 to 18 provide additional results for different topics and different periods. There are variations in the relative ranking of different authors across these sensitivities, but some broad patterns appear to be robust:

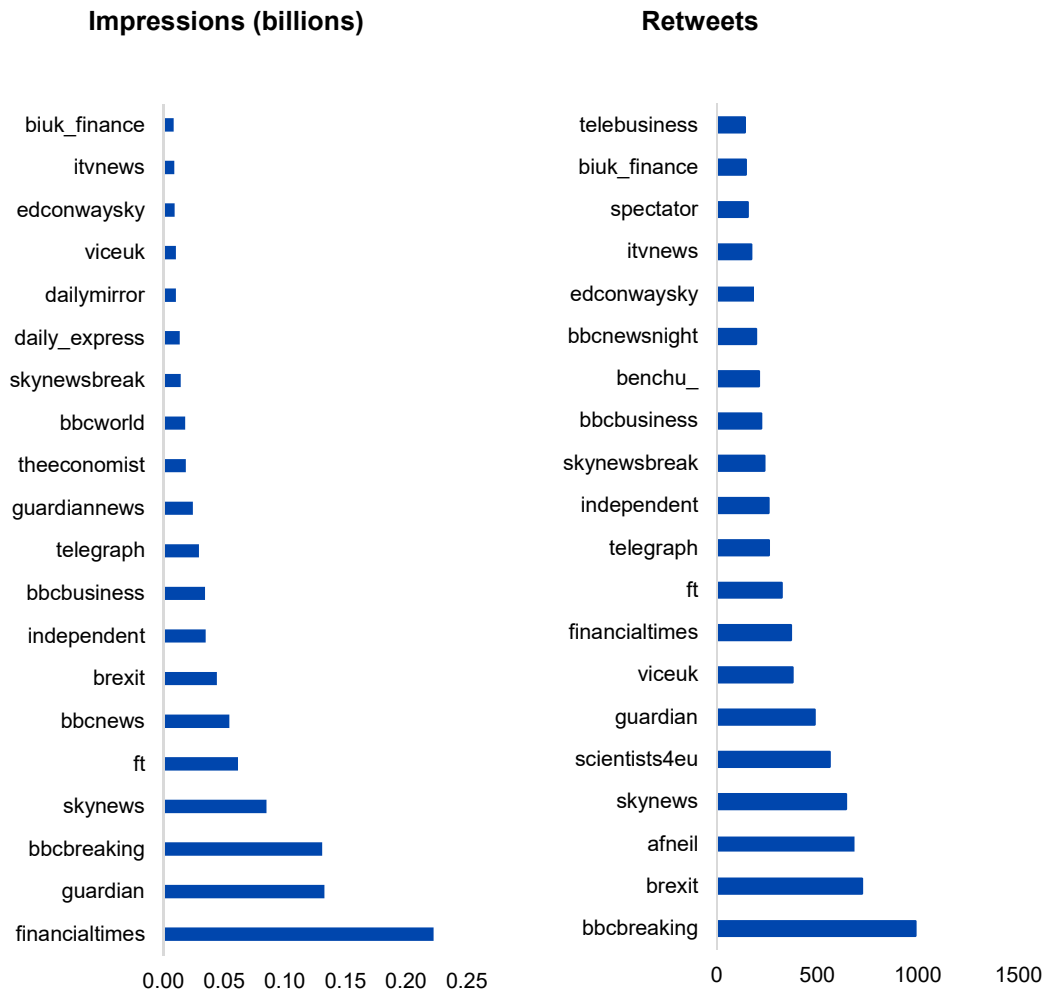
- news organisations generate the largest numbers of impressions;
- Sky News is usually among the top five tweeters by number of impressions;
- individual politicians and commentators generate significant number of retweets;
- The Sun and The Times generate relatively small volumes of impressions and retweets across most topics and most periods, with some exceptions (eg The Sun on UK politics at the time of the Manchester bombing).

**Figure 14: Number of impressions and retweets for Twitter posts related to UK politics news at the time of the EU referendum (17/06/16-30/06/16, top 20 authors)**



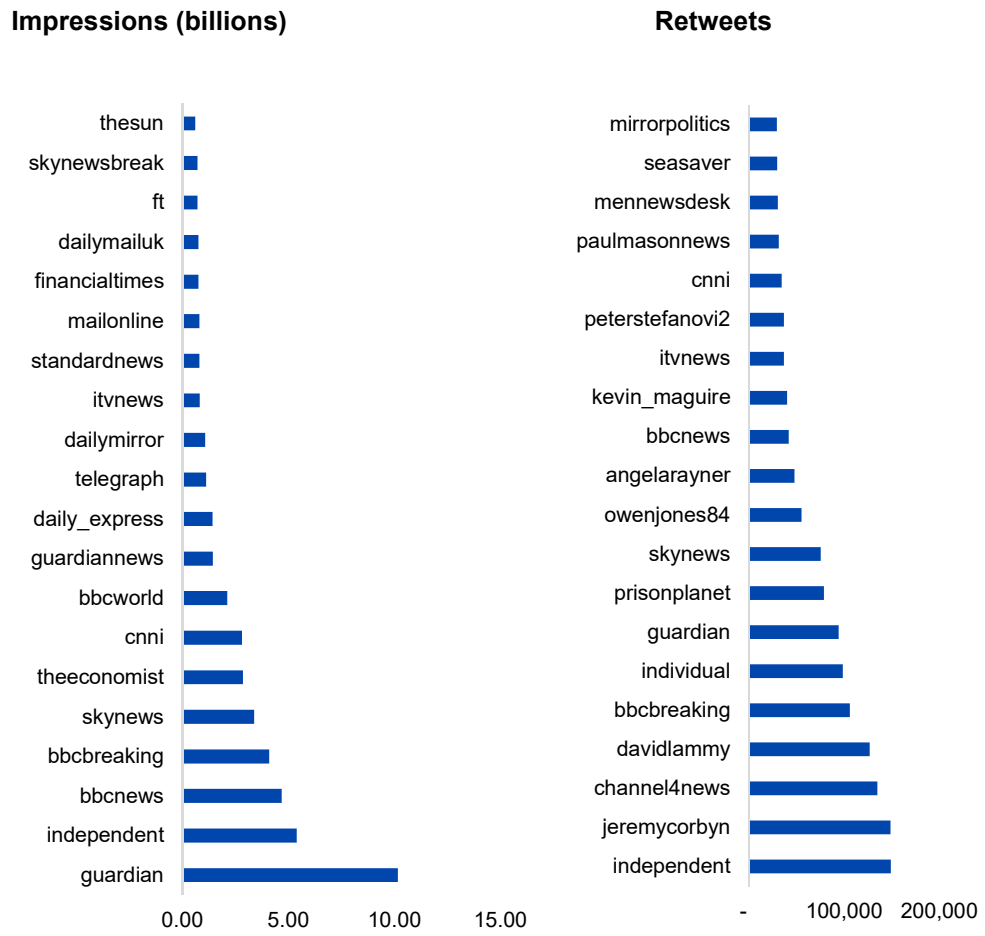
Source: CMA analysis of Brandwatch data.

**Figure 15: Number of impressions and retweets for Twitter posts related to economics news (01/02/17-28/02/17, top 20 authors)**



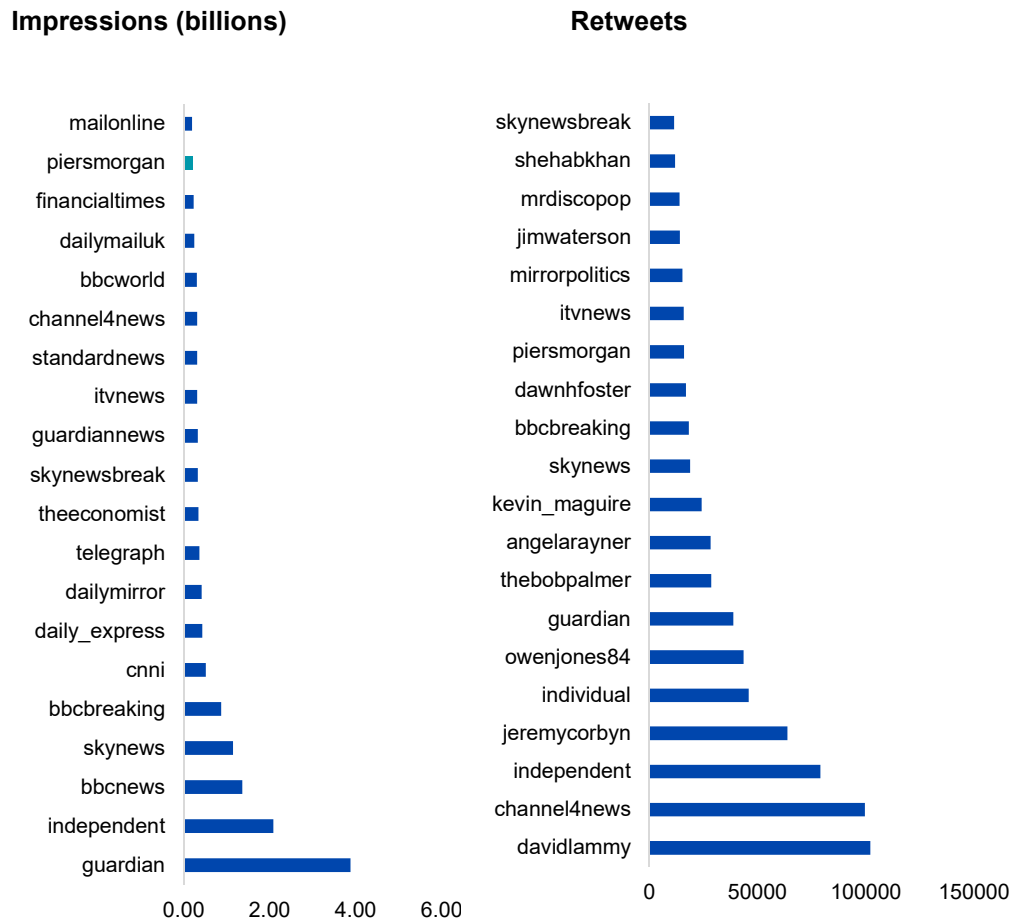
Source: CMA analysis of Brandwatch data.

**Figure 16: Number of impressions and retweets for Twitter posts related to social news for the past 12 months (29/10/16-28/10/17, top 20 authors)**



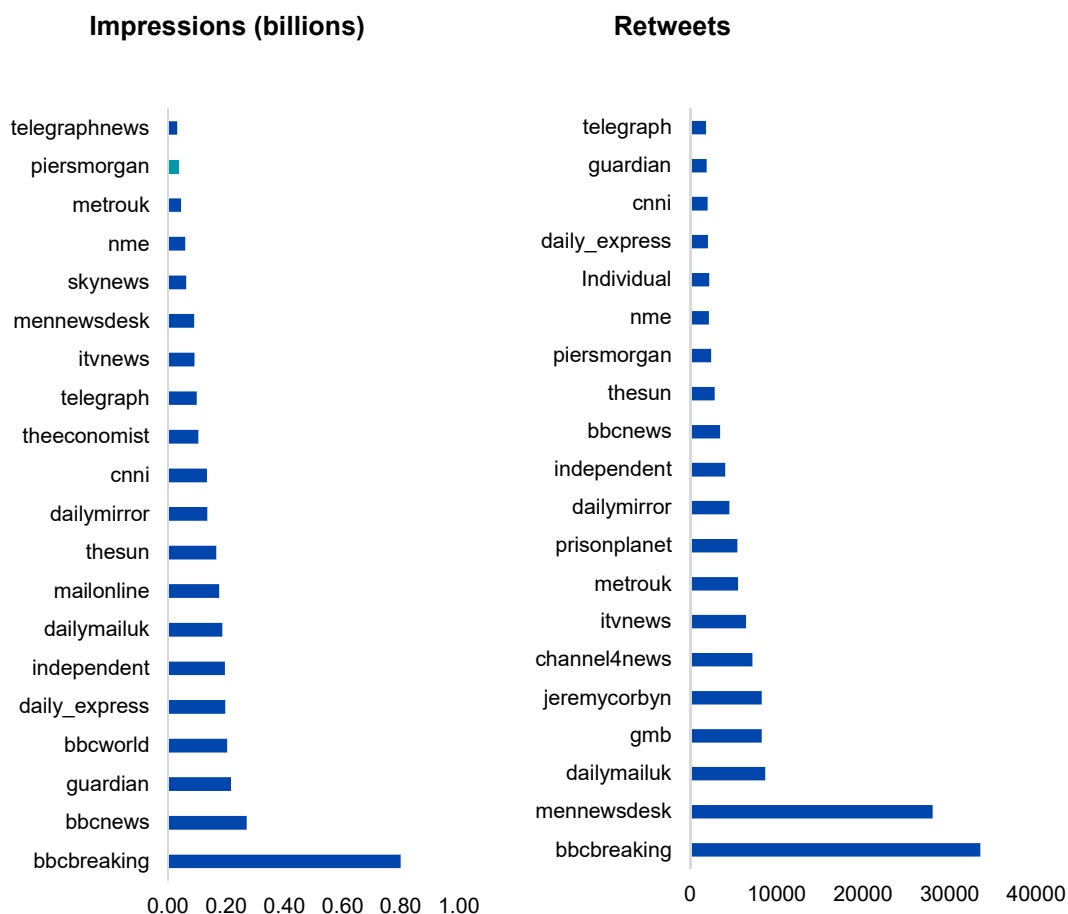
Source: CMA analysis of Brandwatch data.

**Figure 17: Number of impressions and retweets for Twitter posts related to social news at the time of the Grenfell tower fire (14/06/17-13/07/17, top 20 authors)**



Source: CMA analysis of Brandwatch data.

**Figure 18: Number of impressions and retweets for Twitter posts related to social news at the time of the Manchester bombing (22/5/17-28/5/17, top 20 authors)**



Source: CMA analysis of Brandwatch data.

- In summary, this analysis indicates that while some individuals manage to achieve significant levels of engagement for the news content they post on Twitter, news organisations are still the most widely read contributors on the platform. Broadcasters and broadsheet publishers appear to do particularly well, and Sky News has a significant presence on Twitter relative to other news sources.

**Conclusion on the share of news consumption of traditional news organisations online**

- This analysis provides a complex picture of news consumption online, where the relative significance of different news organisations varies depending on the platform and the type of news considered. The [✂] are relatively popular on Facebook, while broadcasters and broadsheet publishers are more successful on Twitter. Sky News is a significant contributor on most platforms with the possible exception of [✂].



## The extent of multi-sourcing by online news users

44. As for reach and consumption, we used two sources of data to evaluate the extent of multi-sourcing online: the MMX database of comScore, and information from Facebook.

### *comScore data*

45. Table 6 summarises information on ‘cross-usage’ of different selected news sources online based on comScore. The level of the data analysed for each provider is the level reported in Table 1. The number reported in each cell of the table is the percentage of users of the ‘column title’ who have also used the ‘row title’ in the period between January and August 2017. In some cases, the results of this analysis are counterintuitive in the sense that they show a very high proportion of cross-usage for titles that are traditionally perceived as having very different positioning and editorial outlooks (for example 86% of The Guardian users also using The Sun, and 100% of The Times users also using The Guardian). It should be noted that, in this analysis, a user is counted as a multi-sourcer between two publishers as soon as they visit two websites in a given month, even if they visit these websites only once (eg if they read one article from a provider posted on social media). This is a much looser measure of multi-sourcing than that provided by the NCS. For this reason, we only used this analysis to consider broad patterns in the extent of multi-sourcing.
46. Notwithstanding these measurement issues, the extent of multi-sourcing appears to vary significantly between different titles. For example, users of The Sun, Huffington Post and The Independent appear to use other sources to a large extent; in contrast, users of The Telegraph and the BBC use other sources to a lower extent.

**Table 6: Analysis of cross-usage online**

	<i>Sky News</i>	<i>The Sun</i>	<i>Times</i>	<i>BBC</i>	<i>Mail Online</i>	<i>Guardian</i>	<i>Telegraph</i>	<i>Independent</i>	<i>BuzzFeed</i>	<i>Huffington Post</i>
Sky News	100%	69%	38%	27%	28%	64%	27%	27%	22%	32%
The Sun	67%	100%	95%	30%	50%	86%	37%	64%	58%	92%
The Times	11%	27%	100%	8%	10%	33%	9%	11%	8%	16%
BBC	77%	88%	79%	100%	74%	87%	74%	80%	68%	75%
Mail Online	45%	84%	60%	41%	100%	78%	47%	54%	47%	56%
Guardian News	52%	73%	100%	25%	40%	100%	31%	53%	44%	94%
Telegraph	60%	84%	71%	56%	64%	83%	100%	70%	62%	70%
Independent	30%	73%	43%	31%	37%	72%	35%	100%	32%	38%
BuzzFeed	25%	70%	34%	27%	34%	62%	33%	33%	100%	36%
Huffington Post	15%	45%	27%	12%	16%	53%	15%	16%	15%	100%

Source: CMA analysis of comScore data.

Notes: Data for each news title relates to the media title/channel/sub-channel specified in Table 1.

47. By way of comparison, Table 7 shows information on multi-sourcing for general news users (ie, not just online users) based on data from the NCS for a selection of news organisations with sufficiently large sample sizes. Table 7 shows the percentage of users of the row who also use the column. The comparison is not straightforward because the news organisations are not always the same, and the NCS sample sizes only allow reporting for a selection of ‘pairs’ of news sources. Also, as explained above the measurement of multi-sourcing relies on different definitions of usage in the two data sets. Notwithstanding these issues, this comparison indicates that multi-sourcing is slightly higher online than in the general population. For example, a greater share of The Sun Online users use other sources compared to readers of the print edition of The Sun.

**Table 7: Analysis of cross-usage on other platforms**

	BBC 1	ITV	Sun on Sunday	Other weekly paper	Sky TV	BBC News TV	BBC website	Daily Mirror	Daily Mail	BBC 1 Radio
BBC One	100%	45%	4%	16%	17%	15%	21%	6%	11%	6%
Daily Mail	75%	43%		33%	22%	20%	19%		100%	
ITV	71%	100%	6%	17%	17%	12%	15%	8%	10%	6%
Sky TV	66%	41%		16%	100%	33%	27%	7%	12%	8%
The Sun	60%	55%	40%	30%	20%	14%	13%	12%	11%	10%

Note: Information is omitted when fewer than 100 respondents used news from both sources.  
Source: CMA analysis of Ofcom [NCS 2016](#) data.

### Multisourcing on Facebook

48. Table 8 provides some information on multi-sourcing for the followers of the parties’ profiles on Facebook. The number reported in each cell of the table is the percentage of followers of the row profile who also follow the column profile on Facebook (for example, 42% of followers of The Sun also follow [X]). These figures suggest a lower extent of multi-sourcing than based on the comScore data. Followers of The Times are the most frequent multi-sourcers: two thirds also follow [X], and significant proportions follow a broad range of newspapers. In contrast, followers of Sky News multi-source to a much lesser extent: 57% follow [X] but relatively few follow other titles. Followers of The Sun fall in between these two patterns: 42% follow [X], and significant proportions follow other publishers, especially other tabloids.

**Table 8: Multisourcing for Sky News and News Corp Facebook followers**

	thesun	[X]	[X]	[X]	skynews	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	times	[X]	[X]
thesun	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
skynews	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

times

Source: Facebook.

[REDACTED]

49. This analysis focuses on patterns of multi-sourcing on one specific platform, Facebook, so it is difficult to draw comparisons with multi-sourcing in the more general population.

### ***Conclusion on multi-sourcing***

50. We found it difficult to measure the exact extent of multi-sourcing online, and even more difficult to make comparisons with multi-sourcing in the general population. The comScore data indicates that multi-sourcing is more prevalent online than on other platforms. The Facebook data shows [REDACTED]. On balance, it is plausible that online users use a greater range of news sources on average. It is also consistent with the observation that most publishers achieve a broader reach online than on more traditional platforms.

### **The growth and positioning of online-only news sources**

51. We considered whether online-only news sources such as BuzzFeed, HuffPost UK or The Independent were likely to grow and provide significant alternatives to traditional media for online news consumers. We considered the following evidence as part of our assessment:
- (a) **reach and consumption:** the information presented earlier indicates that online-only providers have been relatively successful at developing their audiences online, although there are significant differences between them. BuzzFeed has a broad reach (Figure 5) and a relatively high share of consumption relative to other commercial providers (Figure 7), although these figures are for all of its content rather than just news. [REDACTED] (Figure 8 to Figure 11) [REDACTED] (Table 4). The Independent also does relatively well on these metrics, although its share of news consumption is lower according to comScore data (it does not appear among the top news providers in Figure 7). The HuffPost UK has a much smaller reach and accounts for less consumption and engagement;
- (b) **resources:** online-only providers tend to have much smaller resources to produce journalism than publishers on other platforms. BuzzFeed has [REDACTED] editorial staff; The Independent has [REDACTED] editorial staff; and HuffPost UK has [REDACTED] editorial staff. By way of comparison, the majority of other news organisations active in the UK employ more than 400 editorial staff (see Appendix H). This indicates that online-only producers have significantly lower resources at their disposal to produce original content, compared to traditional media organisations;

(c) **positioning:** we considered the positioning and focus of online-only providers, based on their representations:

- (i) BuzzFeed started in the US as an entertainment online site and later developed a news arm in the UK, which is seen as important as its news arm.<sup>100</sup> BuzzFeed told us that it saw itself as ‘a relatively small UK news organisation’ which tended to focus resources on covering stories that are not part of the ‘big media’ news agenda, or which will bring something distinctive to a big rolling story, as well as investigative journalism. BuzzFeed also added that it tends to focus on news that is likely to appeal to consumers under the age of 35;
- (ii) HuffPost UK told us that it had ‘defined editorial pillars’ which set out its strategic priorities. These include politics, inequality, and lifestyle issues such as health and wellbeing. HuffPost UK added that it saw itself ‘at the apex of the traditional broadsheets and tabloids - inspired by the tabloids because of their instinctive understanding of their audiences’ cares and interests, and by the broadsheets’ depth of exclusive, serious and revelatory journalism’;
- (iii) The Independent told us that its editorial outlook is ‘liberal, international, positive and passionate’. It sought to cover a broad range of stories, and was well-known for international news, notably its coverage of Middle East topics.<sup>101</sup>

Overall, while The Independent appears to have a broad coverage, similar to that of traditional news organisations, BuzzFeed and HuffPost UK appear to have slightly narrower focuses compared to traditional newspapers.

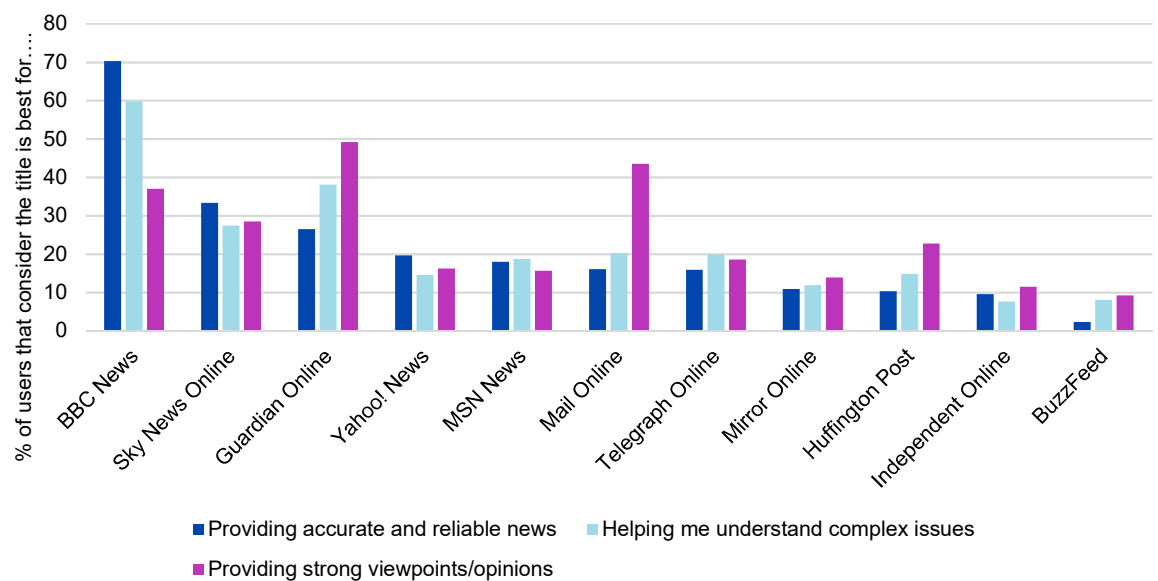
(d) **consumer perceptions:** the Reuters Institute survey on digital news ask respondents to state which news source they think is best for certain purposes, namely: ‘providing accurate and reliable news’; ‘helping me understand complex issues’; and ‘providing strong viewpoints/opinions’. Figure 19 shows that few respondents rate online-only sources as the best source for accurate and reliable news. HuffPost UK is perceived by more respondents as best for proving strong viewpoints and opinions.

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<sup>100</sup> [Summary of hearing with BuzzFeed.](#)

<sup>101</sup> [Transcript of hearing with The Independent.](#)

**Figure 19: Proportion of users who said the title was best for accuracy / understanding/opinion**



Note: the chart shows data for all publishers for which the sample size was larger than 100.  
Source: CMA analysis of Reuters Institute data.

52. In summary, while online-only providers have been successful at growing their audiences and generating engagement on social media, they still have more limited resources than more traditional media, and also narrower sets of editorial priorities. There is also some evidence that their users do not consider them to be as accurate or reliable as more traditional providers.

## The impact of politicians and commentators on news discussions online

53. We considered the relative importance of individual politicians and commentators in current affairs debates on social media, compared to news organisations.
54. The analysis of Twitter data summarised above indicates that, while some individuals manage to achieve significant degrees of engagement for the news content they post on Twitter, news organisations are still the most widely read contributors on the platform.
55. We also collected some indicators of engagement on Facebook for a small sample of individual politicians (the leaders of the four largest parties) and two political blogs (Evolve Politics and The Canary). These are summarised in Figure 20. The data on likes, click throughs, and shares is for the period surrounding the 2017 elections (29 May 2017 to 11 June 2017). The information reported for 'news organisations' is a simple average for the UK

news organisation for which we have engagement data (ie those shown in Figure 11 earlier).

56. Figure 20 shows that Jeremy Corbyn achieved a significant level of engagement on Facebook at the time of the 2017 elections (as measured by likes and shares). The other politicians in the sample achieved much lower level of engagements. The political blogs also recorded significant numbers of shares at around that time, but very low levels of click throughs.

**Figure 20: Facebook engagement data for a sample of politicians and blogs**

Followers (millions)	Likes (millions)
[✂]	[✂]
Click throughs (millions)	Shares (millions)
[✂]	[✂]

Source: CMA analysis of Facebook data.

57. Overall, this analysis indicates that news organisations continue to play a major role in debates on news and current affairs on social media. While some individuals generate significant levels of engagement with their content on social media, news organisation continue to be the largest contributors by number of impressions and click throughs.

## The ability of news outlets to set the agenda online

58. Fox argued that the consumption of news online, including through social media, gives media outlets the ability and incentive to select stories based on indicators of popularity or the requirements of social media platforms rather than based on a political agenda (a process sometimes referred to as ‘reverse agenda-setting’).<sup>102</sup> Fox further argued that the consumption of news through intermediaries reduces the ability of media outlets to influence the selection and prominence of different stories, mainly because usage is not mediated through a front page structured by editors.<sup>103</sup> We considered these two arguments based on representations from third parties.

### *Reverse agenda-setting*

59. All news organisations told us that they use engagement metrics to inform their editorial process to some degree. But they also emphasised that this did

<sup>102</sup> Fox initial submission, paragraphs 4.38(i) and (ii).

<sup>103</sup> Fox initial submission, paragraph 4.38(iii).

not mechanistically determine their decisions. For example, The Guardian told us that social media was not in itself a driver of its journalism. Similarly, HuffPost UK said:

Social media is an important way of reaching our audiences. But we balance that with what we know HuffPost audiences are looking for on social media, rather than chasing hits indiscriminately.

60. The Independent told us that there was a constant tension between what was 'important' and what was 'urgent' to create audience, but this tension was not always resolved in favour of the urgent:

[we] are constantly in debate and often in disagreement as to what is important versus what is urgent to create audience. At the end of the day, that is a continuously dynamic tension and a healthy one because it keeps things going.<sup>104</sup>

61. The Independent added that, considering the list of the 20 most popular articles it published in 2017, only a minority would have been driven by considerations of popularity on social media. The majority of articles related to important news topics such as about President Donald Trump and Brexit.<sup>105</sup>

62. Some news organisations also pointed out that even if they source stories from social media, they will seek to add dimensions to such stories instead of just 'playing back' discussions heard on social media. For example, ITV told us:

Part of the reason to do this [using leads from social media] is to ensure that our audiences do not miss important stories but also because we can often add additional dimensions to such stories.

63. Other titles also emphasised that a 'click bait' strategy could backfire:

Modern technology has allowed the FT and other news organisation to better understand reader habits. (...) None of the above implies that the FT is pursuing a 'click bait' strategy aimed at maximising the number of readers per story. To chase readers for readers sake would damage our brand and our business strategy.

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<sup>104</sup> [Transcript of hearing with The Independent.](#)

<sup>105</sup> [Transcript of hearing with The Independent.](#)

We obviously put up material that we think is of interest but we do not tailor it for the Internet because we hope the credibility of The Times and the seriousness of its reporting and content is attractive enough of itself so we would not twist it at all. You might change headlines to make it more attractive digitally because they search for certain words but the content we would not change.

64. In summary, there is no evidence that engagement metrics dictate the news coverage of their publications. News organisations take account of such metrics to assess the relevance of the content they publish, but this does not mechanistically drive their editorial choices.

***Diminished ability to influence the prominence of stories***

65. We received different views on the extent to which media outlets face an incentive to choose the prominence of stories in response to their popularity online. At one end of the spectrum, an online news provider told us that its news editors did not control the positioning of stories on its website as this was automatically controlled by an algorithm based on information about what people were sharing and reading.<sup>106</sup> At the other end of the spectrum, The Times told us that the running order and the position of the stories were broadly the same in its print and online version.<sup>107</sup>
66. Several news organisations agreed with the proposition that online audiences could be more ‘topic driven’, particularly when accessing content through intermediaries. For example, the BBC said that online audiences could be more ‘selective’ than those listening to news bulletins or programmes on the radio, or watching on TV.
67. However, several news organisations said that the distribution of news online had also enhanced their ability to draw audiences to certain stories, for example by using different formats to make stories more compelling, or by writing the material in such a way that it would be easier to find and consume on social media or search engine. For example, The FT said:

Online news has enhanced our ability to tell stories and reach new audiences by removing the pressure and costs of printing and distribution. It has also allowed us to tell stories in other formats, be it video, audio, or interactive graphics. ... It is

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<sup>106</sup> Hearing with online news provider.

<sup>107</sup> [The Times hearing](#).



paradoxical but true that long-form journalism can do very well online, especially if tagged with a catchy headline.

68. Furthermore, roughly one third of those who use the internet for news do not use intermediaries and as such access the websites and apps of specific providers directly, in which case they are exposed to the hierarchy of stories selected by the publisher. Even those who access content through intermediaries may be drawn to certain stories and topics initially, but if they click on the links to go on to the publishers' website, they might see a further selection of stories picked by the publisher.
69. Independent research has also shown that the ranking or placing of an article on a given website affects its sharing probability, in the sense that articles that are placed more prominently have a higher chance of being shared.<sup>108</sup> So the causality may be going both ways: the popularity of articles online may incentivise some news organisations to make such articles more prominent on their websites, but conversely the prominence of an article on a website may increase its propensity to be shared.
70. Overall, while the distribution of news online has reduced the salience of newspapers' front pages, it has not completely eliminated the ability of news organisations to make choices on the prominence of news stories.

## **The way users engage with online news**

71. In general, news organisations considered that their audiences tended to engage with their content differently depending on whether they accessed it on traditional platforms or online (especially when accessing it through intermediaries). Online users tended to access fewer articles, for shorter durations, and tended to be more topic-driven. One news provider also pointed out that its most popular articles online tended to be live blogs or interactive pieces combining breaking news, comment, and reader reactions, rather than more traditional article. Similarly, ITV told us that people tended to use online news mostly to 'stay in touch' in the course of the day, while TV programmes were more carefully curated overviews of the news of the day, with more emphasis on comment and analysis.
72. There is a nascent literature on this topic, which also indicates that online users, especially social media users, engage with news differently. For example, social media users tend to read articles with more emotional

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<sup>108</sup> Berger, J., & Milkman, K. L. (2012). What makes online content viral? *Journal of Marketing Research*, 49, pages 192 to 205.

content, or more individual perspectives.<sup>109</sup> They also tend to share news content that elicits positive or pleasant feelings rather than negative and neutral content.<sup>110</sup> However, during periods of heightened political activity, public affairs content (featuring politics, government, or economics) is shared more often than non-public affairs content (featuring entertainment, sports, or crime).<sup>111</sup>

73. However, while online users engage with news in different ways, it is more difficult to see any clear implications in terms of whether they are more or less impacted by the news they consume. Some news organisations argued that online users may be less trustful of news. For example, the BBC said:

The volume of information available online also makes it harder for audiences to understand, and therefore trust, news and information sources.

74. Similarly, The Independent told us that:

The rise of less reliable outlets online (in the UK and elsewhere), which are not bound by traditional codes of practice and ethics, may pose challenges to mainstream brands.

75. However, neither of these news organisations said that this was fatal to their own brand. The BBC emphasised that in that context ‘the role of the BBC as a trusted source of news is more important than ever’. The Independent told us that its own experience showed that ‘traditional news values can transition effectively to an online-only operation’. This might indicate that established news brands may have an advantage online. The views of HuffPost UK were consistent with this proposition:

With people finding their news increasingly through social media, traditional outlets have had to work hard to find their voice in the digital sphere to maintain their influence. People are less trustful of the media. That said there is still huge political heft in being a newspaper or broadcaster.

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<sup>109</sup> Susan Athey, Markus Mobius, Jenő Pal; *Social Media and News Consumption Working Paper*, Stanford business school.

<sup>110</sup> Berger, J., & Milkman, K. L. (2010). *Social transmission and viral culture*, Working paper.

<sup>111</sup> Boczkowski, P. J., & Mitchelstein, E. (2012). *How users take advantage of different forms of interactivity on online news sites: Clicking, e-mailing, and commenting*, Human Communication Research.

## Queries used for the analysis of news consumption on Twitter

### **UK politics**

```
(
('general election' NOT (US OR USA OR America OR American OR German OR Germany
OR France OR French))
OR 'UK election'
OR ('2017 election' NOT (France OR French OR German OR Germany))
OR ('snap election' OR 'hung parliament' OR 'minority government')
OR (((Scotland OR Scottish) AND (referendum OR independence) NOT (Spain OR Catalan
OR Catalonia)) OR 'Indy2')
OR ((coalition AND government) OR 'Coalition government' OR 'Tory led government' OR
'Conservative led coalition' OR 'Tory led coalition' OR 'Conservative led government')
OR (manifesto AND (Tory OR conservative OR Labour OR LibDems OR 'Liberal
Democrats'))
OR (Tories OR Tory OR Conservatives OR (raw:Labour) OR ('Momentum' AND Labour) OR
'SNP' OR UKIP OR Libdems OR 'Liberal Democrats' OR 'Ukippers')
OR ('Leadership contest' AND ((Tories OR Tory OR Conservative OR Labour OR UKIP OR
Libdems OR 'Liberal Democrats'))))
OR ('Prime Minister' OR 'Theresa May' OR 'Jeremy Corbyn' OR Corbyn OR 'Vince Cable'
OR 'Nicola Sturgeon' OR 'David Cameron' OR 'George Osborne' OR 'Dianne Abbott' OR
'Ed Miliband' OR ('Ed Balls' NOT (Strictly))OR 'Tim Farron' OR 'Nick Clegg' OR 'Nigel
Farage' OR 'Alex Salmond' OR 'Boris Johnson' OR 'Bojo' OR 'BoJo' OR (Boris NOT (Becker
OR Tennis)) OR borisjohnson OR 'Sadiq Khan')
)
AND country:uk
```

### **Brexit**

```
(
(Brexit OR Brexiter OR Brexiteer)
OR (((Remain OR Remainer OR Remaining) AND (EU OR Europe OR Vote)) OR Remoan
OR Remoaner OR ((Leave OR Leaver OR Leaving) AND (Vote OR EU)))
OR ((Hard OR Soft) AND Brexit)
OR (UK AND immigration)
OR (((raw:EU) AND (UK OR Britain) NOT (hashtags:ForSale)) OR 'European Union' OR
'European Commission' OR ECJ OR 'European Court of Justice' OR ECHR OR 'European
Court of Human Rights' OR Brussels)
OR (Brexit AND (Negotiate OR Negotiation OR Transition))
OR ((Junker OR 'Prime Minister' OR 'Theresa May' OR 'Boris Johnson' OR 'Bojo' OR 'BoJo'
OR (Boris NOT (Becker OR Tennis)) OR borisjohnson OR 'David Davis' OR Davis OR 'Liam
Fox' OR Barnier OR Verhofstadt)
AND ((Brexit OR Brexiter OR Brexiteer) OR (((Remain OR Remainer OR Remaining) AND
(EU OR Europe OR Vote)) OR Remoan OR Remoaner OR ((Leave OR Leaver OR Leaving)
AND (Vote OR EU))))
OR ((Hard OR Soft) AND Brexit)
OR (UK AND immigration)
OR (((raw:EU) AND (UK OR Britain) NOT (hashtags:ForSale) ) OR 'European Union' OR
'European Commission' OR ECJ OR 'European Court of Justice' OR ECHR OR 'European
Court of Human Rights' OR Brussels)
OR (Brexit AND (Negotiate OR Negotiation OR Transition))
))
OR 'Greek Debt Crisis'
```

)  
AND country:uk

### **Economic news**

(  
(UK AND (inflation OR MPC OR 'Monetary Policy Committee' OR 'interest rates' OR GDP))  
OR (((labour OR UK) AND productivity) OR (raw:FTSE100) OR FTSE OR footsie OR  
(Pound AND (Up OR Down OR depreciate OR depreciation)) OR 'Bank of England')  
OR ('zero hour contract' OR 'zero hours contract' OR (UK AND ('wage growth' OR  
(statistics OR stats) AND (employment OR unemployment) )))  
OR (UK AND ('consumer confidence' OR 'House prices' OR 'energy prices' OR 'big 6'))  
OR ('Hinckley Point' OR (UK AND ((Nuclear AND Power) OR 'green energy' OR 'wind  
power'))))  
)  
AND country:uk

### **Social news**

(  
(((attack AND (terror OR terrorist)) AND (london OR manchester OR 'Parsons Green' OR  
'Parson's Green' OR Westminster))  
OR ('public sector' AND pay AND cap) OR ('Universal Credit') OR ('Benefit cuts') OR 'Food  
bank' OR 'Food banks' OR Austerity  
OR ('Rotherham abuse' AND (scandal OR victim))  
OR (Grenfell)  
OR (NHS AND (budget OR spend OR spending OR (Waiting AND (list OR lists))) NOT  
'Search Results')  
OR (Junior AND (doctor OR doctors OR 'doctor's') AND strike)  
OR ('fox hunting' AND ban)  
OR (((Climate AND change) OR Pollution) NOT (America OR American))  
OR ('Sexual Abuse' AND (Inquiry OR 'Public Inquiry'))  
OR ('data privacy' AND(Facebook OR Apple OR Uber OR Twitter OR Google))  
OR ('Fat Cat' AND Salaries)  
) NOT raw:marketwatch.com)  
AND country:uk

## Appendix F: Sensitivity adjustments to share of reference

### Introduction

1. Third parties raised several criticisms of the share of reference calculations presented by Ofcom at phase 1, including:
  - (a) the share of reference does not allocate the use of news providers via an intermediary to the news provider (for example, news read from the Sky News website via Facebook will not be attributed to Sky News if Facebook is reported as the source of news in the survey response);
  - (b) the wholesale share of reference of Global and Bauer radio stations should be attributed to Sky as Sky is the sole provider of news to Independent Radio Network (IRN), which supplies Global and Bauer with news content;<sup>112</sup>
  - (c) share of reference does not account for intensity or duration of use. As such, someone who reads a newspaper article in-depth is weighted the same as someone who reports having read news online who may have glanced at a story briefly.<sup>113</sup>
2. This appendix considers the validity of these criticisms, and outlines the sensitivity adjustments made by us to reflect these criticisms.

### Allocation of news providers' consumption through intermediaries

3. A first possible adjustment to the share of reference calculation relates to the treatment of news consumed through intermediaries. In Ofcom's phase 1 findings, intermediaries such as Facebook and Google are treated as having their own share of reference, with a total share of around 15% across all intermediaries. In practice however, intermediaries typically do not produce original news content, but instead provide a channel for users to access other news providers' content. This means that Ofcom's unadjusted figures will underestimate, to some extent, the total share of reference for any news provider with online content that can be accessed through intermediaries.
4. We considered allocating intermediary shares of reference to providers based on their share of reference.<sup>114</sup> This is likely to over-weight those providers with

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<sup>112</sup> For example, submission from [Media Reform Coalition \(MRC\) and Avaaz](#), page 13.

<sup>113</sup> For example, submission from [Rt Hon Ed Miliband, Sir Vince Cable, Lord Falconer and Rt Hon Ken Clarke \(Ed Miliband et al\)](#), page 19.

<sup>114</sup> This approach was based on internal Ofcom analysis supplied to us.

limited online offerings (for example, radio stations or some TV broadcasters) and under-weight online-only news providers or those providers strong on social media (for example, BuzzFeed).<sup>115</sup> We found that this approach increases the Fox, News Corp and Sky share of reference from 10% to 11%.<sup>116</sup>

5. We note that there are other ways of allocating intermediaries' share of reference. Fox supplied analysis in which intermediaries' share of reference was allocated based on the number of 'likes' that a news provider received on Facebook.<sup>117</sup> This analysis showed the share of reference of Sky increasing by 0.5 percentage points and News Corp by 0.8 percentage points.
6. We summarise our own analysis of consumption via intermediaries in paragraph 9.14 of the report. The analysis suggests that the degree of success of different news providers differs across platforms. The analysis provides only limited evidence as to which reallocation methodology is the most appropriate. Given that the analysis suggests that no provider (either a traditional provider or online-only provider) performs consistently better or worse on intermediaries, a reallocation by overall share of reference would appear appropriate, while noting that this will likely over-weight providers with a weak online presence (such as radio stations). This adjustment gives an adjusted share of reference for the Parties and News Corp at 11%. We note that this approach gives a similar result to the reallocation conducted by Fox when based on the number of Facebook 'likes,' suggesting that under a range of approaches the increase is likely to be in the region of one percentage point.

## Allocation of wholesale supply to IRN

7. Sky News supplies news content to radio stations through IRN, for whom Sky is the current supplier of content. IRN currently provides services to the

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<sup>115</sup> Fox argued that this approach will ignore a long tail of online providers. We do not agree, as the long tail of online providers are included in the NCS as respondents can name 'other' sources of news if these are not included in the list of responses to the NCS. A reallocation of intermediaries' share of reference will be allocated to these 'others'.

<sup>116</sup> Fox argued in [its response to provisional findings](#) that such a reallocation treats intermediaries as 'mere vessels' and by reallocating their shares of reference, we have 'assumed away' any contribution to plurality that intermediaries have. We consider it appropriate when making adjustments to the share of reference to reallocate intermediaries as we are interested in the consumption of different news producing sources. We considered in detail the role of intermediaries in contributing to plurality, in particular through our analysis of news consumed using an intermediary in Appendix E, and our discussion of how intermediaries rank and display news stories in chapter 9.

<sup>117</sup> [Plurality implications of the Fox/Sky Transaction, CRA.](#)

commercial stations controlled by Bauer and Global, as well as a number of local independent radio stations such as Hallam FM and Signal 1.<sup>118</sup>

8. Ofcom's share of reference calculations did not attribute any of the consumption of IRN radio news to Sky. Third parties have argued<sup>119</sup> that the wholesale supply of news to IRN should be attributed – at least partially – to Sky at the wholesale level, thus increasing Sky's wholesale share of reference.<sup>120</sup>
9. Ofcom previously decided that content supplied by Sky to IRN should not be attributed to Sky at the wholesale level. This is because individual stations can choose how much IRN content they use. Bauer and Global told Ofcom that they had significant editorial control and were able to source information from other providers.<sup>121</sup> Sky also argued that because of the degree of editorial control that lies with Bauer and Global, it is inappropriate to allocate any of their share of reference to Sky.<sup>122</sup>
10. We requested information from Bauer and Global to better understand how they use IRN content in their news bulletins. Both companies stated that they have editorial control over the extent to which IRN content is used. Both Bauer and Global have inhouse news teams, with Bauer stating that it employs [redacted] broadcast journalists and Global stating that it employs [redacted] people over its LBC, LBC News, Group News and Regional News functions. Bauer stated that it 'is common for none of the Sky News Radio supplied content to be used across the Bauer Radio portfolio' and noted that Bauer has influence through its position on the IRN editorial board. Bauer stated that it uses Sky News Radio for its national news bulletins overnight. Global estimated that at LBC only [redacted]% of content is from IRN and at other brands (Heart, Capital, Classic FM, Smooth, Gold and Radio X) approximately [redacted]% of content is from IRN (with the rest coming from news agencies or self-produced content).
11. Third parties provided evidence in support of attributing 50% of Global and Bauer's consumption to Sky.<sup>123</sup> The MRC provided research suggesting that bulletins from Global and Bauer often cover the same stories,<sup>124</sup> and often use

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<sup>118</sup> [IRN website](#).

<sup>119</sup> For example, submission from [MRC and Avaaz](#), page 13.

<sup>120</sup> Given a lack of data for the smaller local providers, a reallocation of share of reference for these stations is not possible. Given the relatively small number of these stations that are [clients of IRN](#) and the relatively low share of reference these stations are likely to have, their exclusion should not be material.

<sup>121</sup> [Ofcom Public Interest Report](#), paragraph 6.23.

<sup>122</sup> [Sky response to provisional findings](#), paragraph 4.44.

<sup>123</sup> For example [MRC and Avaaz submission](#), page 13.

<sup>124</sup> [MRC and Avaaz submission](#).

the same audio clips to illustrate the story (eg of politicians/royalty/celebrities making statements).<sup>125</sup>

12. Further analysis was provided to us by Fox comparing the stories covered in Global, Bauer, and BBC radio stations over a week.<sup>126</sup> This analysis found that on certain days some stories were covered by all outlets given their high profile (such as the New York Terror Attack), while on other days there was a high degree of variation in the stories ran and the ordering of these stories.
13. Given the analysis conducted by Ofcom, and comments from Fox, Bauer and Global, we find that it is unlikely that Sky has a high degree of control at the wholesale level over the news content provided by Bauer and Global to listeners. However, we consider that there is some control given that these stations tend to rely on the IRN output [REDACTED], and, as such may exert limited or no editorial control, it is appropriate to allocate some wholesale supply to Sky.
14. Global estimated that the percentage of news content it uses from IRN is [REDACTED]%. We consider that this is an appropriate point at which to start an adjustment, taking share of reference from Global and Bauer and allocating it to Sky. However, the Parties noted [REDACTED]. We have no evidence to quantify precisely [REDACTED] is likely to be. Nevertheless, we consider that there will be some bias upwards in Sky's share of reference as a result of its supply of news to IRN, and the [REDACTED]% provides an upper estimate of what this bias could be. This allocation would add an upper bound of [REDACTED] percentage points to Sky's wholesale share of reference, increasing it to an upper bound of over [REDACTED]%.<sup>127</sup> Our view is that this is an upper limit on any adjustment to reflect Sky's input via IRN.

## Intensity and duration of use

15. Submissions from third parties noted that Ofcom's share of reference measure does not take account of the average duration and intensity of use. It is based purely on a measure of frequency of use (for example, the number of times in a given month that someone watches Sky News). As such, someone who responds to the NCS stating that they read The Sunday Times in-depth once a week is accorded the same weight as someone who looks on The Sun website (however briefly) once a week. Since the impact and influence of a particular source might be expected to depend in part on the total amount of time during which it is viewed or read, we considered how we might test the

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<sup>125</sup> Appendix 3 to [MRC submission](#).

<sup>126</sup> [A critique of MRC and Avaaz's submission, by Communications Chambers](#).

<sup>127</sup> Global and Bauer's combined share of reference is [REDACTED]%. [REDACTED]% of this is [REDACTED]%.



sensitivity of the share of reference results to adjustments to reflect duration of use.

16. We considered weighting shares of reference by duration of use, so that those news sources that are used for longer periods of time are weighted accordingly. It is important to note that, due to data limitations and the assumptions required to undertake such an exercise, the results reported are solely indicative and should be seen in the context of providing the direction of any bias caused by differences in the duration of use of different types of news. As such, the discussion of this adjustment is the last of the adjustments as it is the adjustment with the potential for being the least precise.
17. We used the Ofcom estimates of shares of reference and adjusted for duration of use.
18. Ofcom's share of reference calculation is based on whether a respondent uses a news source<sup>128</sup> and the frequency<sup>129</sup> with which the news source is used. Therefore, if a user uses, for example, online news more often than a newspaper, this will be included in the share of reference estimate.<sup>130</sup>
19. As frequency is already considered in share of reference, our adjustment takes **each time** that the news source is used and weights **each use** by duration of use.
20. We first gathered evidence on the duration that each news source (TV, newspaper, radio and online) is used.
21. Many sources of evidence give only the average use over the course of, for example, a week. The average use (over, say, a week) will be influenced by the frequency of use (ie total use divided by frequency of use). The share of reference calculation is already weighted by frequency of use, so it is necessary to strip any measures of frequency out when calculating duration.

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<sup>128</sup> We noted previously that due to problems with recall the reach of online news providers as measured by the NCS tends to be lower than as measured by comScore. The result of this, other things being equal, is a lower share of reference for online sources.

<sup>129</sup> We also attempted to assess whether the frequency measures (the other component of share of reference) in relation to online sources in the NCS correspond to frequency measures as captured by comScore. We used the frequency of use measure in the NCS, weighted it, and scaled up to a monthly measure to estimate usage of the BBC, Sky, Daily Mail, and The Guardian websites at between 35 to 40 times a month (respectively). comScore reports the average minutes per visitor in a month and the average minutes per visit. Dividing the former by the latter gives the average number of visits. In August 2017 the average number of visits tended to be lower than the NCS estimates for the sites listed above (using the comScore data level as outlined in Table 1 of Appendix E) with the exception of the BBC which was almost equal. comScore data therefore suggests that respondents to the NCS could be overstating the number of times they use a website.

<sup>130</sup> We note that online sources may be understated in their use but overstated in the frequency of their use. These two measures are the basis of the share of reference. It is not clear the extent to which these biases cancel one another out. However, we consider that the share of reference remains a suitable starting point (see discussion on the suitability of the Ofcom measurement framework in paragraphs 6.55 to 6.64 of the report).

We did this by calculating total use over a week and dividing by frequency of use per week to give a duration per use:

- (a) in relation to viewing of news on TV, we estimate that the average viewer watches 15 minutes of news per sitting;<sup>131</sup>
- (b) in relation to reading of newspapers we estimate that the average time reading a newspaper per sitting is 40 minutes;<sup>132,133</sup>
- (c) in relation to radio we estimate that the average consumption of news is six minutes per sitting;<sup>134</sup>
- (d) in relation to online we estimate that the average consumption of news is two minutes per sitting.<sup>135</sup>

22. We do not have complete data that would allow us to calculate measures of duration for each of the over 150 news sources used in our analysis. As this is an indicative exercise, we decided to apply an average duration per sitting uniformly across sources on a platform (ie all TV channels are weighted at 15 minutes per sitting), with two exceptions. Fox submitted that we should include durations for The Sun and The Times, as this data is available and

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<sup>131</sup> Broadcasters' Audience Research Board (BARB) reports that in September 2017 the average weekly viewing of TV was 22 hours and 45 minutes, and 9.05% of viewing was of news and weather. This gives average weekly viewing of two hours and four minutes of news viewing a week. A weighted average of the frequency of which TV channels were viewed for news in the 2016 NCS shows that viewers watch the TV news, on average, just over once a day (a score of 8.07 in the NCS weighting system, which means that a user watches TV 8.1 times a week). 15 minutes is therefore total viewing of news (just over two hours a week) divided by frequency (eight times a week).

<sup>132</sup> NRS data in [Thurman \(2016\)](#) suggests that the average time spent reading a newspaper is 40 minutes. Fox argued that the duration adjustment for newspapers should be reduced by 25% to reflect non-news content, but provided no evidence as to why 25% is an appropriate adjustment. As such, we have not made a downwards adjustment but note that the estimate for newspapers is likely to be an overstatement given newspapers may contain a range of non-news content.

<sup>133</sup> The NCS also asks about magazine usage. Due to lack of data on duration, the same time has been applied to magazines as newspapers.

<sup>134</sup> RAJAR reports the average hours (across all radio stations) spent in September 2017 as 21.3 hours a week. The NCS reports that users listen to the radio on average 10.1 times a week. Per sitting we calculate this to equate to 2.1 hours per sitting (21.3/10.1). RAJAR does not separate news from other radio content so we assumed that radio stations carry a three-minute bulletin per hour. This will understate the position of stations such as Radio 4 and LBC that are more news focused.

<sup>135</sup> Analysis of comScore data shows a weighted average of two minutes' use per visit across the 20 news sites listed in Table 1, Appendix E. We did not need to use frequency measures from the NCS to calculate this as comScore provides a measure of duration per visit. We note that if the NCS underestimates the frequency with which people visit news websites, the base share of reference as calculated by Ofcom will be an underestimate for news sources online. Fox argued that this two-minute estimate is in error, as it does not include time spent looking at news on Facebook, Google and Twitter. Fox acknowledged that there is no data available on time spent on these sites, but speculates that time spent looking at news on these sites could be longer, meaning a duration adjustment for online use should be higher than two minutes. We note that comScore measures time spent browsing news websites via Apple News, Facebook and Google back to the publisher, when that website is browsed using Apple News, Facebook's Instant Articles or Google's AMP tool. As such, the CMA considers that its estimate is the best available, and will include time spent reading the news on certain intermediaries to some degree.

relevant.<sup>136</sup> The estimates of duration are therefore 15 minutes for each time news is watched on TV, 40 minutes for each time news is read in a newspaper (with the exception of The Sun, at 32 minutes, and The Times, at 47 minutes), six minutes for radio listening and two minutes for online use.<sup>137</sup> These estimates correspond, in terms of relativity, to third party comments on the nature of use of the different channels (with TV and newspapers being deeper forms of engagement and online being a shallow form of engagement).

23. Furthermore, Fox argued that our approach underweights the importance of online sources with its duration adjustment. Fox noted that 28% of NCS respondents stated that online was their most important source of news, which is inconsistent with the duration adjustments. Furthermore, Fox argued that our analysis downplays the influence of online news sources given the low duration adjustment made for these providers. We made these duration adjustments to reflect levels of consumption, not to reflect relative importance or influence. The importance and influence of different news sources are discussed in chapter 11 of the final report. Furthermore, we do not consider there is any reason, in principle, why a respondent cannot identify online news as being important to them while using it for only short periods of time (they may for example, use a news source for short periods of time, but frequently. We note that frequency measures are already factored into the share of reference).
24. The results of weighting the share of reference calculation for 2016 to include duration of use per sitting are shown in Figure 21. Generally, those providing printed newspapers increase their share of reference, while radio stations and online-only providers are sharply reduced (Global and Facebook are the largest providers of online and radio news, with shares of reference of 2% and 1% respectively).
25. Key points to note are:
  - (a) the BBC's share of reference is lower on this revised basis than for Ofcom's central estimate. This is due to the number of people using the

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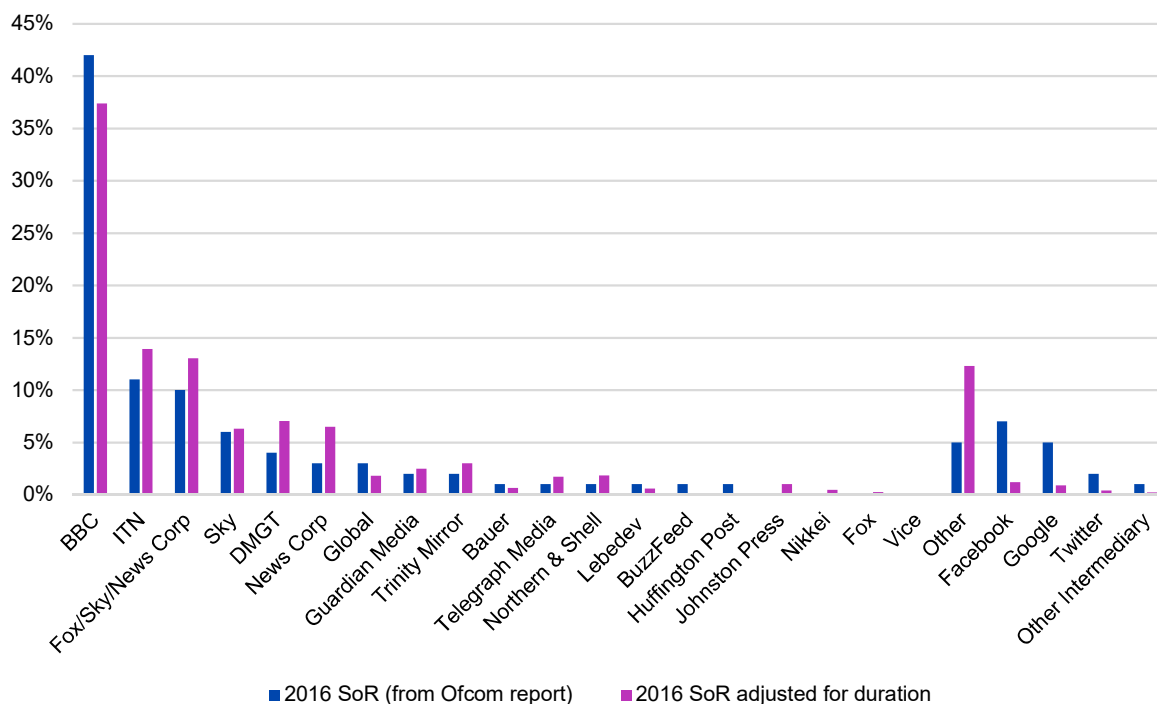
<sup>136</sup> NRS data in Thurman (2016) suggests that the average time spent reading The Sun is 32 minutes and The Times 47 minutes. Fox also argued that the use of comScore data is also in error because the duration estimate may capture those users of a website who are not using it for news (instead capturing those visiting a website, for, say celebrity gossip) and those who only have a 'fleeting' relationship with a website. As set out in Table 1, Appendix E, we used the comScore title/channel most relevant to news provision. Given that comScore data captures length of visit metrics for those using the website, we consider this to be the most directly relevant source of information relating to duration of use on a news website.

<sup>137</sup> We do not have complete data that would allow us to calculate measures for each individual source in the NCS. As this is an indicative exercise, we decided to apply an average duration per sitting uniformly across sources on a platform (ie all TV channels are weighted at 15 minutes per sitting).

BBC’s website and radio services which are weighted relatively lower than newspapers and TV;

- (b) ITN’s share of reference is higher than the central estimate due to the majority of its users being TV viewers (and a relatively less important online service);
- (c) Sky’s share of reference is slightly higher (due to the number of TV viewers);
- (d) News Corp’s share of reference sees a large increase, due to the long duration of reading a newspaper;
- (e) DMGT’s share of reference also increases for the same reason;
- (f) the joint share of reference for Fox, Sky, and News Corp is higher than in Ofcom’s central cases (we estimate its share of reference increasing from 10% to 13%). The increase is due to the increased presence of the News Corp newspaper titles.

**Figure 21: Wholesale share of reference, 2016, base version and adjusted for duration of use**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

## Outcome of sensitivity adjustments

26. We calculated a range of share of reference estimates for the Parties and News Corp based on the adjustments discussed above. These are:

- (a) an allocation of intermediary share of reference to the Parties and News Corp, with intermediary share allocated as a proportion of all non-intermediary share;
  - (b) an allocation of up to [~~8~~] % of Global and Bauer's wholesale share of reference to Sky; and
  - (c) an adjustment to take account of duration of use.
27. Making the first adjustment, the share of reference of the Parties will increase to 11% (with Sky having a share of reference of 8% and Fox/News Corp having a share of reference of 3%). If the second condition holds (in addition to the first), the Parties' and News Corp's share of reference increases up to between [11 and 13%].<sup>138</sup>
28. We note, in particular, the assumptions required to estimate the share of reference when adjusting for duration. We therefore made this adjustment last. Making this adjustment will increase the Parties' and News Corp's share of reference up to [12 to 13%].<sup>139</sup>
29. In summary, Ofcom's current share of reference estimate for the Parties and News Corp is 10% (with Sky on over 6% and Fox/News Corp over 3%). Given the adjustments discussed, we consider that this share of reference is an underestimate of cross platform consumption of the Parties and News Corp. Adjustments for allocation of intermediaries, wholesale supply of news to IRN, and duration of use will all tend to increase the share of reference. We acknowledge that any estimate of the share of reference after adjustments relies on a number of assumptions. We conclude that the share of reference should be higher than the 10% estimated by Ofcom, and is likely to be between [10 to 13%].

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<sup>138</sup> We have placed the true figure within a range as the percentage allocation of Bauer and Global to Sky is confidential information. The range represents an allocation of between [0 and the 50%] allocation suggested by third parties.

<sup>139</sup> We note that once a duration adjustment is made, the allocation of Global/Bauer content chosen does not significantly affect the final share of reference because the duration methodology significantly down-weights radio.

## Appendix G: Age and social groups reached by news providers

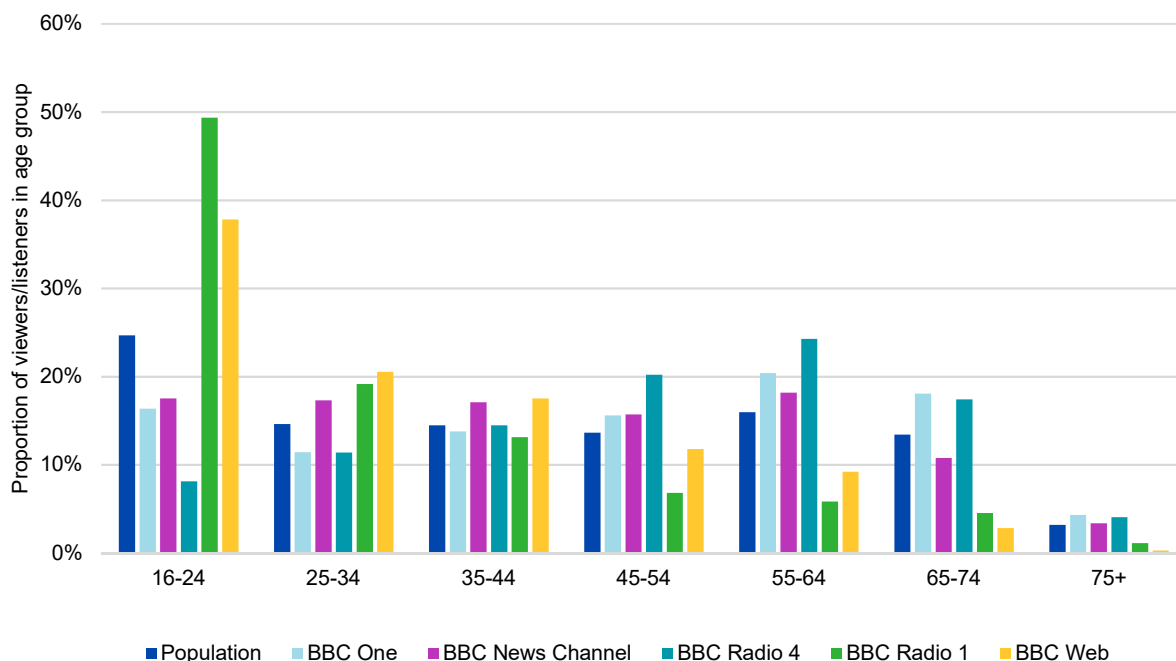
### Introduction

1. In chapter 11, we found that Sky News appears to have a more balanced social demographic audience than News Corp titles (with a younger online age profile), indicating that acquiring Sky News will provide the MFT with a broader demographic audience profile.
2. This appendix uses data from the Ofcom NCS to assess the ages and social groups reached by other news providers to understand their demographic reach. We focused on the BBC, ITN, DMGT, Guardian Media Group (GMG) and Telegraph Group as these are some of the largest remaining news providers by share of reference. We find that, with the exception of the BBC and ITN, their demographic reach is not as broad as that of the MFT following the Transaction.

### BBC

3. Figure 22 and Figure 23 shows that the BBC draws its audience from a relatively diverse range of ages and social grades depending on the title. Younger audiences are more likely to receive news from the BBC website or BBC Radio 1 compared to older audiences, and higher social grades more likely to listen to BBC Radio 4.

**Figure 22: Proportion of BBC viewers/listeners in each age group**

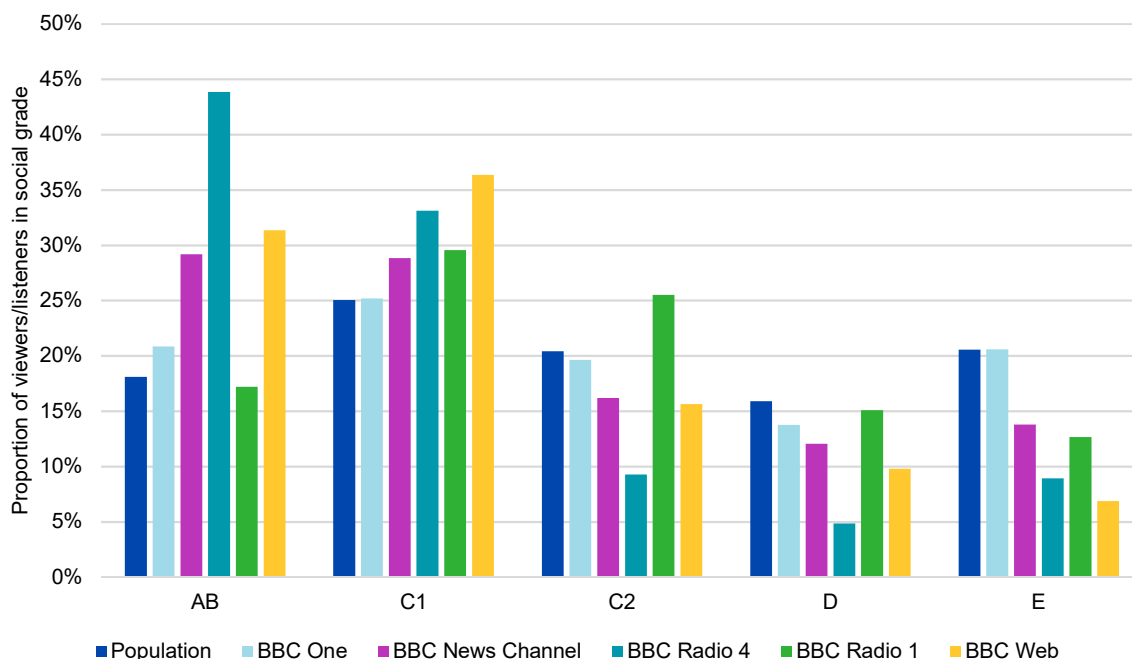


Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), BBC One (6,294), BBC News Channel (1,502), BBC Radio 4 (885), BBC Radio 1 (616), BBC Website (2,339).

Questions 5a, 5d, 5e of the NCS: *Thinking specifically about television/radio/internet or apps or alerts, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*

**Figure 23: Proportion of BBC viewers/listeners in each social group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), BBC One (6,294), BBC News Channel (1,502), BBC Radio 4 (885), BBC Radio 1 (616), BBC Website (2,339).

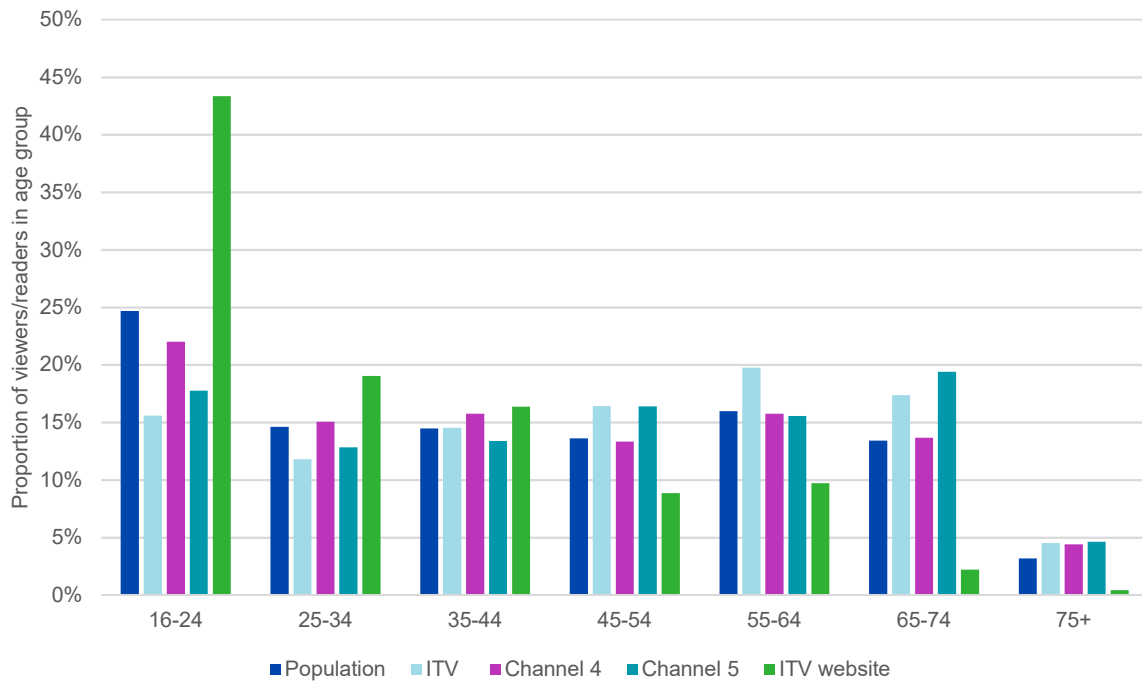
Questions 5a, 5d, 5e of the NCS: *Thinking specifically about television/radio/internet or apps or alerts, which of the following do you use for news nowadays?*

Social grade ascribed by interviewer.

## ITN

4. Figure 24 and Figure 25 shows that ITN draws its audience from a relatively diverse range of ages and social grades. Younger audiences are more likely to use the ITV website, while higher social grades are more likely to watch Channel 4 News while lower social grades are more likely to watch ITV or Channel 5 news.

**Figure 24: Proportion of ITN viewers/readers in each age group**



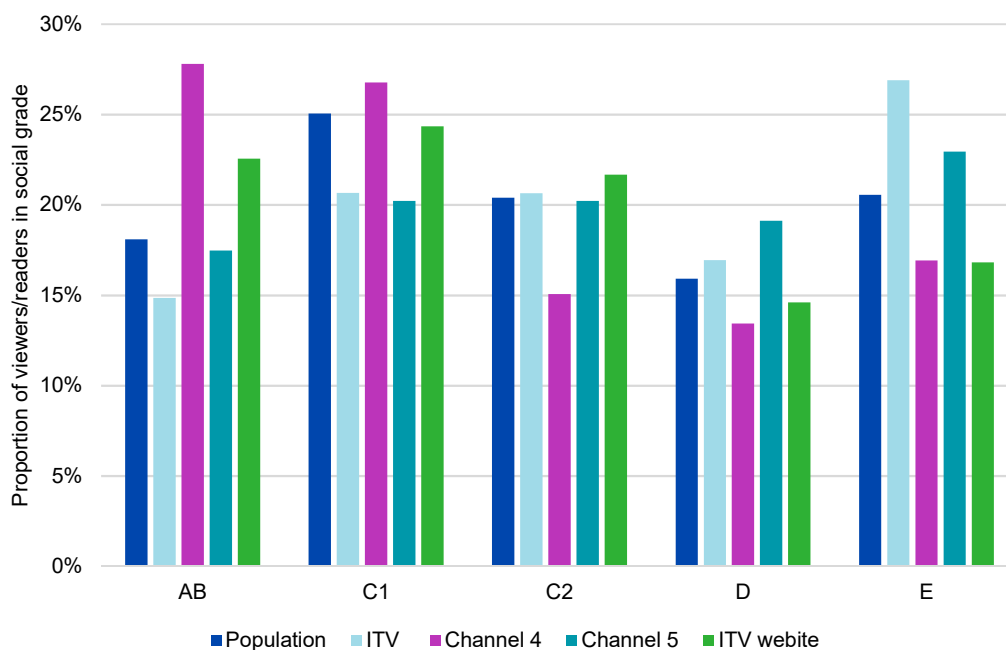
Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), ITV (4,012), Channel 4 (863), Channel 5 (366), ITV website (226).

Questions 5a, 5e of the NCS: *Thinking specifically about television/internet/apps or alerts, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*



**Figure 25: Proportion of ITN viewers/readers in each social group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), ITV (4,012), Channel 4 (863), Channel 5 (366), ITV website (226).

Questions 5a, 5e of the NCS: *Thinking specifically about television/internet/apps or alerts, which of the following do you use for news nowadays?*

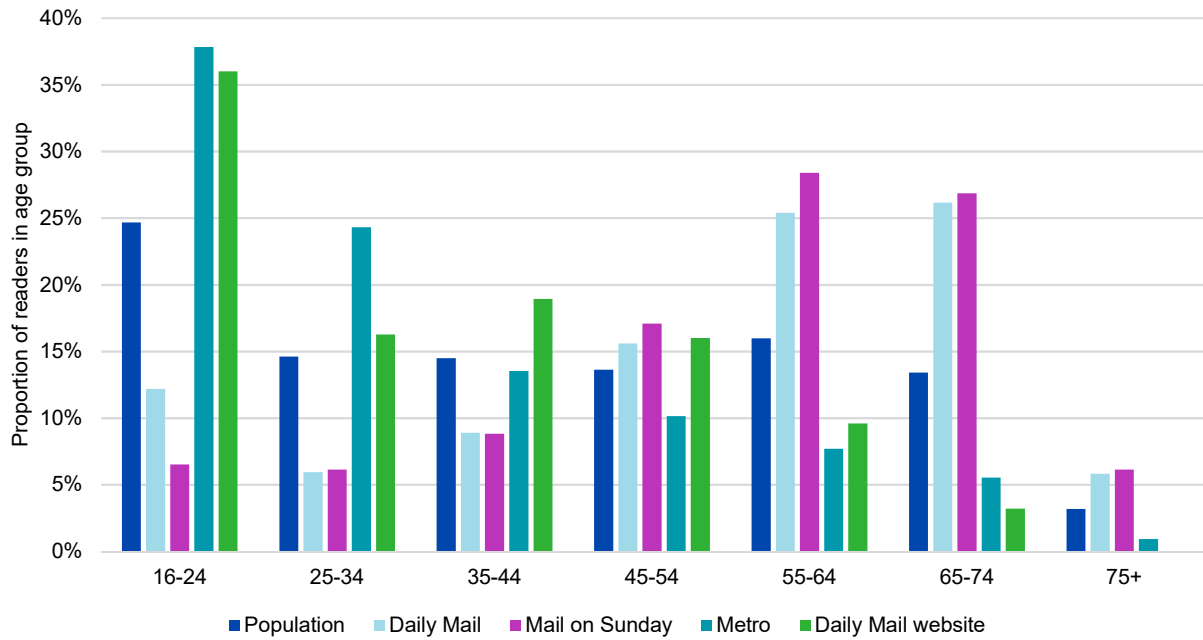
Social grade ascribed by interviewer.

## DMGT

**Figure 26 and**

- Figure 27 show that readers of The Daily Mail and The Mail on Sunday are similar in terms of the makeup of their age and social grades. We note that the Daily Mail website and The Metro have a higher proportion of their audience drawn from younger age groups compared to The Daily Mail and The Mail on Sunday.

**Figure 26: Proportion of DMGT readers in each age group**

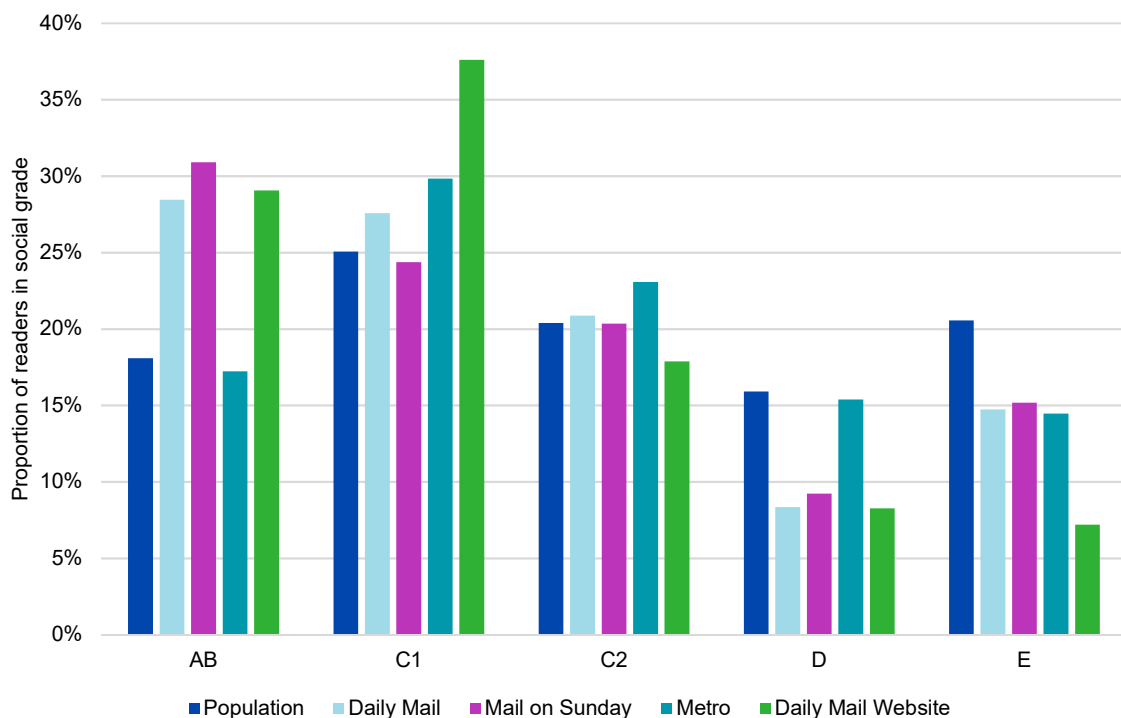


Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), Daily Mail (910), Sunday Mail (521), Metro (325), Daily Mail Website (375).

Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*

**Figure 27: Proportion of DMGT readers in each social group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

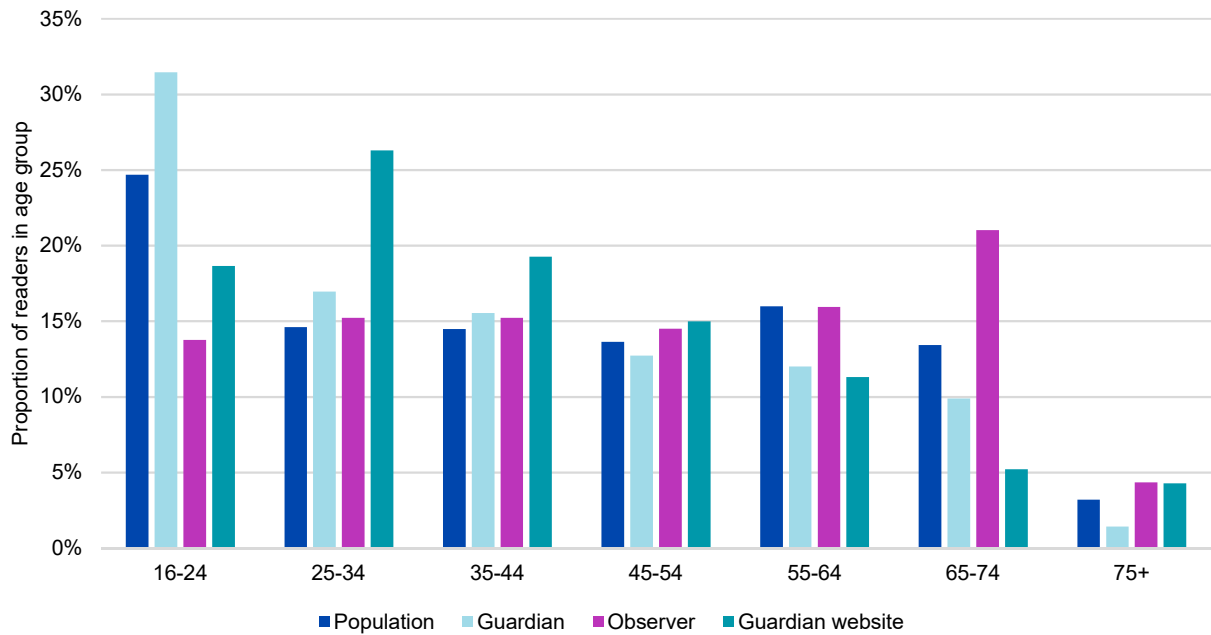
Base: all respondents (11,408), Daily Mail (910), Sunday Mail (521), Metro (325), Daily Mail Website (375).

Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* Social grade ascribed by interviewer.

## Guardian Media Group

6. Figure 28 and Figure 29 show that readers of The Guardian, The Observer, and The Guardian website are similar in terms of the makeup of their age and social grades. There are some differences with a higher proportion of usage of the website among those aged 25 to 44 compared to newspaper readership, and higher readership of The Observer among older age groups compared to other titles.

**Figure 28: Proportion of GMG readers in each age group**

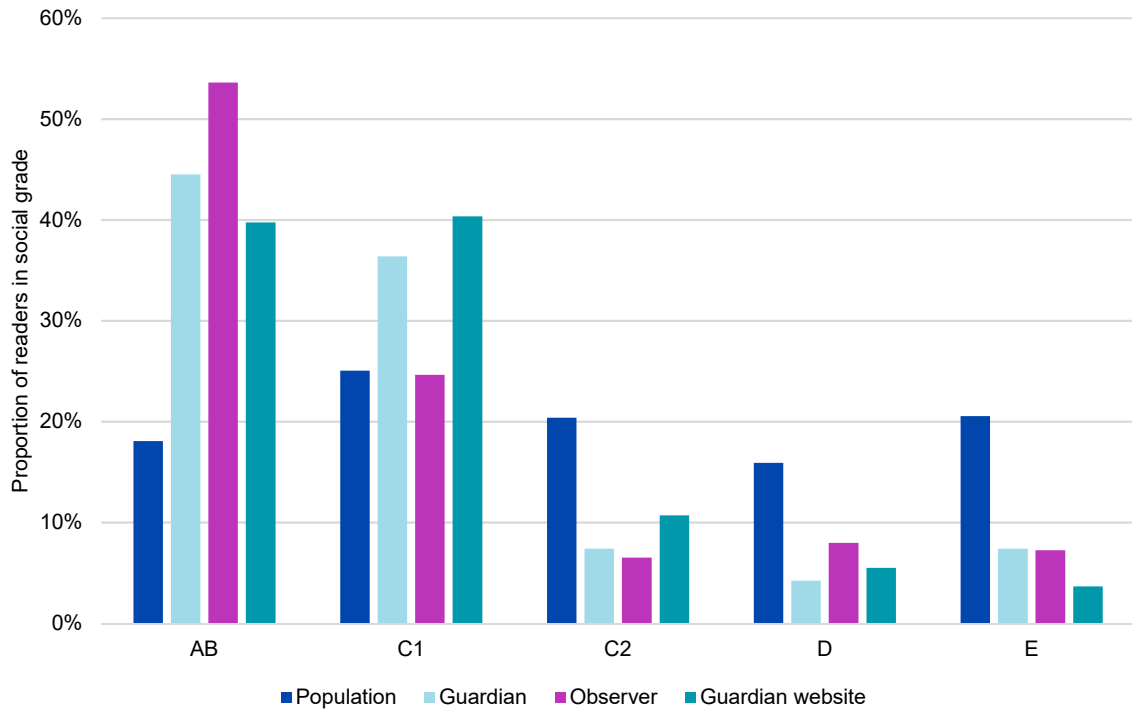


Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), Guardian (283), Observer (138), Guardian website (327).

Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*

**Figure 29: Proportion of GMG readers in each social group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), Guardian (283), Observer (138), Guardian website (327).

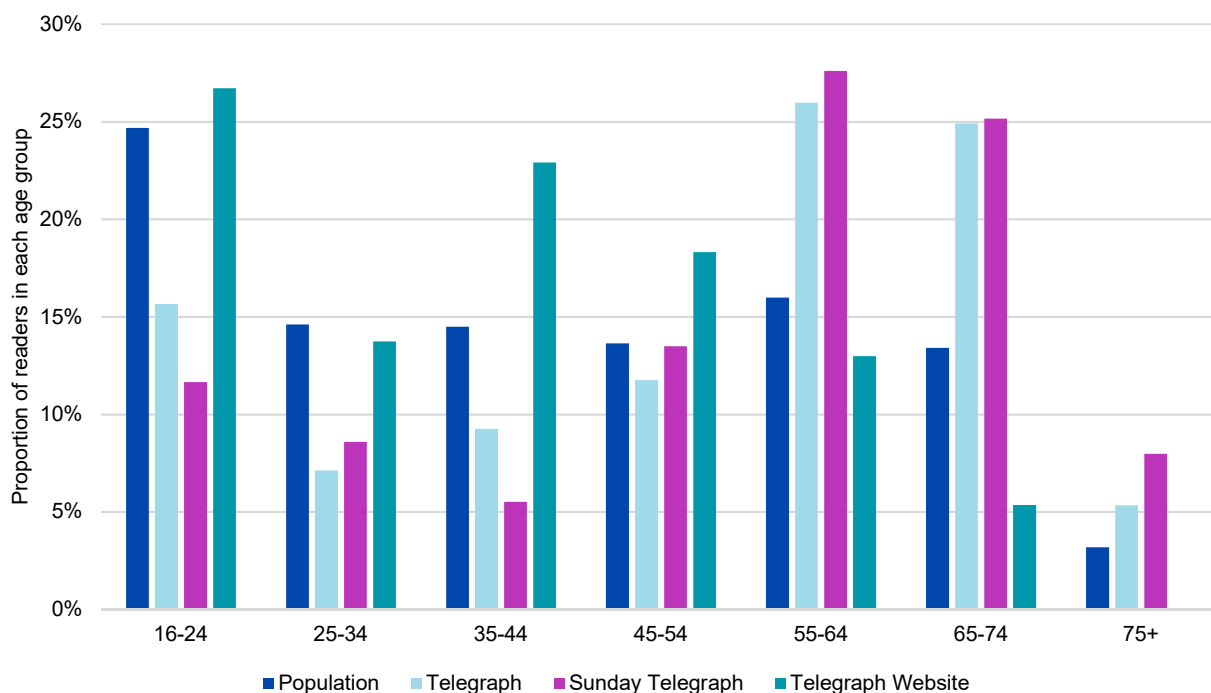
Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* Social grade ascribed by interviewer.

## Telegraph Group

**Figure 30 and**

- Figure 31 show that readers of The Telegraph, The Sunday Telegraph, and The Telegraph website are made up of similar proportions of age groups and social grades (this is particularly the case in relation to social grade). The Telegraph website is made up a younger audience compared to the other Telegraph titles.

**Figure 30: Proportion of Telegraph Group readers in each age group**

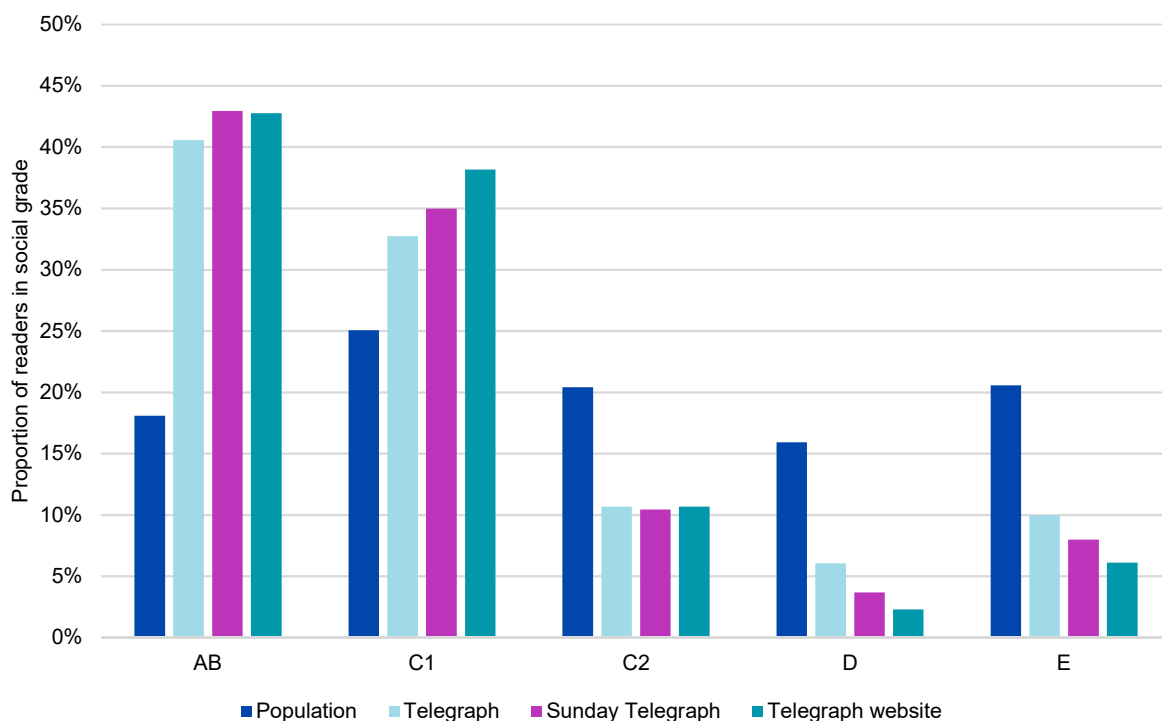


Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), Telegraph (281), Sunday Telegraph (163), Telegraph website (131).

Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* and question S2: *What was your age last birthday?*

**Figure 31: Proportion of Telegraph Group readers in each social group**



Source: CMA analysis of Ofcom [NCS 2016](#) data.

Base: all respondents (11,408), Telegraph (281), Sunday Telegraph (163), Telegraph website (131).

Questions 5b, 5c, 5e of the NCS: *Thinking specifically about daily newspapers/weekly newspapers/internet or apps or alerts, which of the following do you use for news nowadays?* Social grade ascribed by interviewer.

## Appendix H: News production

### Introduction

1. This appendix summarises evidence in relation to the resources used in news gathering activities.
2. We requested information from major UK news providers as to the costs of their news gathering activities, and the number of full time staff that they engage in news gathering activities.

### Findings

3. To produce the most comparable data set, we considered news gathering online and offline combined,<sup>140</sup> and looked at costs and staffing at an overall level and at an editorial level.<sup>141</sup> Table 9 summarises the information we gathered. The data is based on responses to information requests and it is not possible to compile data on a like-for-like basis (for example, different titles may class different types of costs as editorial costs).

**Table 9: Costs and staffing for major UK news providers, 2017<sup>142</sup>**

News title	Staff numbers		Costs (£m, per year)	
	All	Editorial	All	Editorial
<b>Bauer<sup>143</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>BBC</b>	[REDACTED] <sup>144</sup>	[REDACTED]	[REDACTED] <sup>145</sup>	[REDACTED]
<b>BuzzFeed</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Channel 4<sup>146, 147</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Channel 5<sup>148</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Daily Mail</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Daily Mirror<sup>149</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Evening Standard</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Financial Times</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>140</sup> Many news providers were not able to separate out costs and staffing between their online and print/broadcast titles.

<sup>141</sup> We also asked for equivalent data in relation to commercial, printing and other costs but the nature of data supplied made comparisons difficult.

<sup>142</sup> We requested data for 'the last year'. The precise time period of data supplied by third parties varies.

<sup>143</sup> [REDACTED].

<sup>144</sup> [REDACTED].

<sup>145</sup> [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

<sup>149</sup> [REDACTED].

<b>Global150</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Guardian</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Independent</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>ITN</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>ITV<sup>151</sup></b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Metro</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Northern and Shell152</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Sky News</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Telegraph</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>The Sun</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>The Times</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: The Parties and third parties.

4. Items of note from Table 9 include:

- The Sun and The Times are among the [REDACTED] providers of news in terms of editorial staff engaged and costs incurred;
- Sky News' [REDACTED];
- BuzzFeed's staffing level is [REDACTED] compared to more established titles;
- there appears to be little correlation between the number of staff employed by an organisation and its reach. The reach of newspapers is typically relatively low, and they employ a comparatively high number of editorial staff, while TV channels can reach much higher proportions of the population with less editorial resource.<sup>153</sup>

5. Sky submitted that plurality does not require every individual news provider to have large scale news gathering operations. Sky noted that a range of business models are possible, citing for example, the availability of third party sources of pictures and video or the possibility of focusing on specific news genres, such as political news, content as an alternative to large scale news gathering.

6. We consider that while alternative models exist, the largest providers in terms of reach and consumption metrics remain the established news providers with significant news gathering operations. Paragraphs 11.84 and 11.85 outline

<sup>150</sup> [REDACTED].

<sup>151</sup> [REDACTED].

<sup>152</sup> [REDACTED].

<sup>153</sup> We compared the reach using BARB data and NRS data and compared this to the number of editorial staff employed by a news provider. Data constraints meant this could be done for a relatively small number of titles (nine) and the comparisons are not like-for-like (mixing definitions of reach between NRS and BARB).

how providers with greater news gathering resource appear to be able to more consistently lead the news agenda.

## Conclusions

7. We note that the data on news production may not be directly comparable from news provider to news provider. However, The Sun and The Times appear to be among [redacted], and Sky News' editorial staffing is towards the [redacted]. BuzzFeed, a newer news provider, appears [redacted] than more established providers in terms of editorial staffing and spending.



## Appendix I: Agenda leading studies

### Studies on agenda leading

1. There have been a number of studies looking at the impact of news providers on the news agenda. In this appendix, we analyse two particular studies:
  - (a) a Cardiff University study on inter-media agenda setting during the 2015 UK general election campaign;<sup>154</sup> and
  - (b) MRC analysis on agenda leading.

### **Cardiff University study**

2. Ofcom referenced a study by Cardiff University which concluded that morning newspapers continued to share a similar agenda to the evening TV news bulletins during the 2015 general election, despite the increasing use of online news. The same study also concluded that newspapers, particularly broadsheet titles, acted as opinion leaders, and identified what it concluded were clear moments during the 2015 campaign where TV news followed stories originating from newspapers.<sup>155</sup>
3. Over and above this, the study also found that the largest proportion of stories reported by newspapers before appearing on national TV news bulletins came from News Corp titles (23% overall; 16.3% from The Times/Sunday Times, and 6.7% from The Sun/Sun on Sunday). The next most influential was The Telegraph and The Sunday Telegraph (20.2%). In spite of being the largest newspaper group in terms of consumption (according to Ofcom's consumption metrics), the DMGT was only the fourth most influential on this measure (see Table 10).

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<sup>154</sup> Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, (April 2016). R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK General Election campaign*.

<sup>155</sup> Ofcom Public Interest Report, paragraphs 8.16 and 8.19.

**Table 10: Origin of election related broadcast stories which had been previously covered by newspapers**

<i>Newspaper</i>	<i>Percentage of times broadcast story covered (%)</i>
The Daily Telegraph/The Sunday Telegraph	20.2
The Times/The Sunday Times	16.3
The Independent/The Independent on Sunday	15.4
The Daily Mail/The Mail on Sunday	12.5
The Guardian/Observer	12.5
The Daily Mirror/Sunday Mirror	9.6
The Daily Express/Sunday Express	6.7
The Sun/The Sun on Sunday	6.7

Source: Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK general election campaign*, April 2016.

4. The MRC and others claimed that the study showed that national newspapers – including News UK titles – played a significant agenda leading role over TV news.<sup>156</sup> While recognising that the study did not provide conclusive evidence Ofcom considered that it suggested that News Corp’s influence over public opinion went beyond that measurable by consumption metrics alone.<sup>157</sup>
5. We identified a number of weaknesses with the conclusions that have been drawn from this study. The primary weakness is that the research is not able to control for newsworthiness of items. Where a news item is newsworthy, we would expect other media outlets to cover the story, regardless of the source.<sup>158</sup> The authors themselves say that ‘our study [...] cannot clearly determine whether newspapers influenced broadcaster’s editorial decision making.’ Therefore, we consider that the quantitative elements of the study are at best able to show correlation of news agendas between broadcasters and newspapers, rather than causation.<sup>159</sup>

<sup>156</sup> [MRC issues statement response, page 15.](#)

<sup>157</sup> [Ofcom Public Interest Report](#), paragraphs 8.22 to 8.23.

<sup>158</sup> This point is also highlighted in Fox’s submission ([Plurality implications of the Fox/Sky Transaction, CRA, 8 November 2017](#)), where it notes that ‘It is necessary to distinguish between genuine agenda setting (newspaper coverage that results in broadcasters running stories they would not otherwise have run) and instances where newspapers report first on a story that would have been covered anyway. While the Cushion et al study makes efforts to distinguish between these effects by looking at articles that were published by newspapers the previous day, it appears that many of the ‘agenda setting’ stories relate to issues of obvious public interest that would almost certainly have been covered by broadcasters in any event. Most notably, and as acknowledged by the authors, nine of the 12 most significant ‘agenda setting’ stories were in fact newspapers getting a first look at parties’ policy announcements.’

<sup>159</sup> Other issues with the study include the small sample size of stories. The study considered 843 election related news items. However, it excluded all process stories, which accounted for 505 news items and 140 different policy stories. This reduces the ability of a study to claim that one news medium influences another when a number of relevant stories are excluded from the analysis. Fox’s submission concerns, which points to the

6. Indeed, all the news providers we asked indicated that they monitor other news providers (with some news organisations also monitoring social media), and pick up stories originally covered elsewhere where they considered them verifiable and of interest to their respective audiences (often with their own particular angle).<sup>160</sup> However, no one particular news provider was considered particularly important by any news provider responding to our questions.<sup>161</sup>
7. In particular, we note Channel 5's comment that, for its Wright Stuff programme, if it is felt that a particular source has been used more frequently than others in a given time period then the editorial team may try to focus on other sources for a while (though this decision would not be based on the specific number of stories originating from any given source). Further, Sky News, Channel 4 News, GMG and BuzzFeed each provided a list of stories they originated and which had, subsequent to airing or publication, been picked up and reported on by other major news providers. This suggests that, provided a story is sufficiently newsworthy, it will be picked up regardless of source (we note that this group of responses covers TV news, newspapers and online-only).
8. In addition, the study does not seek to explore the extent to which the news agenda flows the other way with newspapers picking up stories from broadcasters. As noted, Channel 4's response to our requests for information indicated that a number of their most influential stories were subsequently picked up by newspapers and other media outlets. In addition, BuzzFeed told us that on the occasions it had worked with another media organisation, each time it was with the BBC so it could amplify the story. This suggests that broadcasters can drive the news agenda and can seek to amplify issues covered by other media outlets. The qualitative research in the Cardiff study appears consistent with our findings above that broadcasters consider newspapers as a source. One of the broadcaster respondents to the Cardiff study noted that:

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implied magnitude of effects to be small. Fox submission, [Plurality implications of the Fox/Sky Transaction, CRA, pages 30 to 35](#).

<sup>160</sup> Audience relevance was considered a key criteria for news providers, which goes back to the symbiotic relationship referred to by Rebekah Brooks. The symbiotic nature of the relationship was also noted by Ed Miliband MP. We note the BBC stated how individual editors will consider what stories are important and significant for its audiences, and how, for example, the Newsbeat audience on Radio 1 will have different interests from the audience for Today on Radio 4 ([Hearing with the BBC](#)). Similarly, ITV explained how the news stories covered during 'Good Morning, Britain' evolved throughout the programme from hard news to more magazine-type content reflecting how the audience changed through the duration of the programme. Sky also said that while its journalists keep up to date with the news and will sometimes discuss at editorial meetings what other news organisations are doing, Sky News editorial decisions are focused in particular on its own news gathering activities.

<sup>161</sup> We also note that Tony Gallagher stated that Sky News was always on in The Sun newsroom as it was good for breaking news.

my job is to make sure that we lead the news as much as possible but of course do we pick up stories from the papers? Of course we do. But did we slavishly follow their agenda? No, absolutely not.<sup>162</sup>

9. We also note that the Cardiff study was conducted at an election period, which may mean that stories are more closely related. A study by King's College London found that in the 2015 general election:

The press rarely altered the news agenda of the lead parties during the campaign; few stories significantly disrupted or subverted the issues put forward by one or both of the two the Parties.<sup>163</sup>

### **MRC analysis**

10. The MRC submitted further analysis which sought to assess whether national newspapers play a significant agenda setting role over TV news. Once stories had been filtered out to show a clear agenda leader, it found that out of the 66 stories, 'News UK accounted for the highest share both in terms of the number of stories and levels of salience.'<sup>164</sup> The MRC said that 'These results are consistent with previous research showing that newspapers continue to play a dominant role in inter-media agenda setting.'
11. Similar to the Cardiff study, the MRC research does not control for newsworthiness of items so it could only provide an indication of influence rather than demonstrating causality. In addition, the sample size for this study was small, and covered a short period of time. It is difficult for us to assess whether these results are representative. In addition, the results do not include all stories, so may overstate the degree to which media organisations are led by one another, given the results only cover stories with a clear agenda leader.
12. Submissions from the Parties also raised other weaknesses with this study,<sup>165</sup> including:

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<sup>162</sup> Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK general election campaign*, April 2016.

<sup>163</sup> Moore M., Ramsay G. (October 2015) *UK Election 2015 - Setting the agenda*, Centre for the Study of Media, Communication and Power with support from the Media Standards Trust, the Policy Institute at King's and Ebay Inc.

<sup>164</sup> MRC response to issues statement.

<sup>165</sup> Fox submission: *Robert Kenny critique of MRC submission*, pages 12 to 16 and *Plurality implications of the Fox/Sky transaction*, CRA, pages 35 to 37 for further details.

- (a) an inability to distinguish between leading the agenda and breaking news – the MRC study appears to focus on who first covers the story, but this does not mean that the coverage by others is due to the coverage by the first to break the story (ie the study may simply measure the ability to break inherently newsworthy stories first, rather than influence);<sup>166</sup>
- (b) omission of other sources which set the agenda – for example, the study does not include Twitter, which was identified as a significant source of stories in another study that MRC relied on;<sup>167</sup>
- (c) inconsistency of the results with the Cardiff study – this suggests this methodology may be an unstable basis on which to reach judgements.<sup>168</sup>

13. The MRC responded to these critiques:

- (a) with respect to leading the agenda vs breaking news stories, the MRC said that its concept of ‘agenda leading’ (as opposed to ‘agenda setting’) captures the potential for agenda influence signalled by particular titles or brands who consistently and systematically carry headlines before others;<sup>169</sup>
- (b) with respect to the omission of other sources, the MRC noted that its study does not purport to measure the degree to which some outlets decide to cover a story because it is carried by others. Nor is it concerned with origination of stories. Rather, it is concerned exclusively with the potential for certain outlets to increase the salience of stories. This is important because virtually any conceivable news story at any given time is covered somewhere in the digital news sphere. According to the MRC, what matters most are those news stories that cut across information noise and fragmented audiences and become, potentially, embedded in the public consciousness;<sup>170</sup>
- (c) finally, with respect to inconsistency of results between its study and the Cardiff study, the MRC suggested that despite clear conceptual and contextual differences between the two studies, there is a remarkable similarity between the results of each. For example, while the Cardiff

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<sup>166</sup> This is a similar critique to the separation of newsworthy items from those that are leading the agenda.

<sup>167</sup> Harder et al note that ‘discussions of particular news stories [on Twitter] precede websites’ news coverage in a (small) majority of cases (55 percent)’. [Harder, R.A., Sevenans, J. and Van Aelst, P., \*Intermedia Agenda Setting in the Social media age: how traditional players dominate the news agenda in election times\*, \*The International Journal of Press/Politics\*, 28 April 2017.](#)

<sup>168</sup> Indeed, to find evidence of agenda setting convincing, we would need to see relatively consistent results between periods.

<sup>169</sup> [MRC response to Fox 8 November submission, page 22.](#)

<sup>170</sup> [MRC response to Fox 8 November submission, page 23.](#)

study found The Telegraph to be most important and the MRC identified The Times as the most persistent agenda leader, it is striking that in both studies, The Telegraph and The Times are the two most important agenda influencers, in spite of their relatively small (direct) audience share. Further, both studies found that News UK titles combined had the most influence, followed by The Telegraph.<sup>171</sup>

## Conclusion

14. Overall, the studies on news agenda setting may provide some indication of the importance of different news providers. However, neither the Cardiff study or the MRC study were carried out over a long enough period of time for us to assess the representativeness of the results. Neither do they show the degree of self-generated stories by news providers, which would likely dilute the significance of the results. The evidence in these studies does, however, support the view at least that traditional news providers (whether on their established print or broadcast medium or online) together play a significant part in driving the news agenda.

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<sup>171</sup> [MRC response to Fox 8 November submission, page 25.](#)

## Appendix J: News Corp's media ownership in Australia

### Introduction

1. In this appendix, we consider News Corp Australia's acquisition of Australian News Channel (ANC), and its relevance to our Inquiry with respect to the two public interest considerations referred by the Secretary of State.
2. The News Corp Australia/ANC transaction led to an increase in the amount of influence that the Murdoch Family Trust (MFT) has over ANC, and there are concerns that as a result it could use its increased influence to change the content of programming on Sky News Australia (officially known as SKY NEWS LIVE), or align the news positions of News Corp Australia newspapers and Sky News Australia.
3. Third parties raised concerns that there are growing similarities between Fox News and Sky News Australia, particularly in the amount of partisan programming that appears on Sky News Australia. These third parties were concerned that this approach may be adopted by Sky News in the UK. The first part of this appendix considers these concerns.
4. The second part of this appendix focuses on the cross-platform nature of the transaction, including the potential for News Corp Australia to align News Corp Australia newspapers and Sky News Australia.
5. We consider this transaction to be a relevant case study of cross-media ownership, as it brings a newspaper group and TV news organisation under the same controller, which is similar to the considerations in our Inquiry. We note, however, that the different acquirer in this case – News Corp Australia, not Fox – makes it difficult to draw parallels to the Inquiry. We also recognise that the regulatory context and media landscape in Australia is different from the UK, and this affects the extent to which we can draw parallels with possible effects in the UK.

### News Corp's acquisition of Australian News Channel

6. News Corp Australia acquired 100% of Australia News Channel Pty Ltd (ANC) in December 2016. Before the transaction, ANC was a joint venture between Seven, Nine Entertainment Company and Sky Plc, each with an effective ownership of 33.3%.
7. ANC makes available a suite of news and information channels across multiple media platforms. In Australia, the corresponding channels are available on the Foxtel subscription platform. Foxtel is a cable network that is

50% owned by News Corporation (which is based in the US) with the other 50% owned by Telstra, an Australian telecommunications and media company.

8. Subscribers on Foxtel can choose from 13 separate Sky News services. Unlike Sky News in the UK, ANC broadcasts a number of Sky News branded news and information channels, the three main channels being:<sup>172</sup>
  - (a) Sky News Live (hereinafter referred to as 'Sky News Australia', as the popularised name of this channel): this channel predominantly broadcasts live news programming, focusing on national affairs and politics. It also broadcasts a number of commentary and opinion programmes;
  - (b) Sky News Business: this channel is a 24-hour business channel and broadcasts live coverage of the Australian Stock Exchange as well as commentary and opinion programmes;
  - (c) Sky News: A-PAC (Australia's Public Affairs Channel).
9. We focus on the first of these channels – Sky News Australia, as this is the main Sky News channel, and is also the channel that relates to third party concerns submitted to us.
10. News Corp told us that the strategic rationale for entering into the broadcast market was to:
  - (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED].

### Third party concerns

11. A number of third parties told us that there has been an increase in more opinion led, right-wing shows on Sky News Australia since News Corp's acquisition in December 2016.<sup>173</sup>

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<sup>172</sup> Other channels are Sky News Weather, Sky News UK, Sky News Sydney, Sky News Melbourne, Sky News Brisbane, Sky News Adelaide, Sky News Perth, pop up channel(s) called US News featuring ABC USA and CBS, and additional pop up channels for major events eg national elections.

<sup>173</sup> [CPBF submission](#); [Ed Miliband et al submission](#).



12. Denis Muller, a Senior Research Fellow in the Centre for Advancing Journalism, University of Melbourne, wrote an article in which he discussed the similarities between Sky News Australia and Fox News, stating:

Sky has a kind of split personality. During the day, it runs a professional, no-frills TV news service. This has value because it lets its coverage run without too much editing or interruptions. So you get the whole prime ministerial door-stop, rather than just quick grabs wrapped up in a news report... But when darkness falls, it becomes a different beast altogether. The Bolt Report is a nightly piece of right-wing punditry in which Andrew Bolt does his more-in-sadness-than-in-anger routine.<sup>174</sup>

13. The Campaign for Press and Broadcasting Freedom (CPBF) noted that Sky News Australia is increasingly veering away from the requirements of the Australian Code with respect to its current affairs talk show evening programming since the transaction. CPBF, among others, is concerned that the partisan approach to news and current affairs adopted by MFT affiliated news broadcasters, even when not in breach of regulatory standards, may be taken by Sky News in the UK if Fox is permitted to own 100% of the shares of Sky. CPBF told us: ‘...an MFT-controlled company took control of Sky News Australia...on December 1 last year...the service is evidently following the ‘Foxification’ formula that is feared for the future of Sky in London.’<sup>175</sup>

14. Similarly, Ed Miliband et al told us:

[The Murdoch’s] record at both Fox News and Sky News Australia is one of creating highly opinionated, conflict-oriented TV programmes that offer an entertaining and compelling version of the news (albeit one that is frequently biased and often inaccurate).<sup>176</sup>

15. CPBF highlighted two presenters – Andrew Bolt and Paul Murray – as examples of this change. It claimed that the style of the programmes hosted by these two presenters is similar to the programmes broadcast on Fox News in the US, such as ‘Hannity and Friends’, which is presented Sean Hannity and ‘The O’Reilly Factor’ which was presented by Bill O’Reilly before he left Fox News. CPBF noted that other media experts have commented on the change in programming that has taken place since the acquisition by News

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<sup>174</sup> [The Conversation, Sky News is not yet Fox News, but it has the good, the bad and the uglies.](#)

<sup>175</sup> [CPBF submission.](#)

<sup>176</sup> [Ed Miliband et al submission.](#)

Corp.<sup>177</sup> One example of this is from Paul Barry, the host for ABC's Media Watch, who stated in July 2017:

There's long been talk of the Foxification of Sky News. Since News Corp took full ownership in December it's been looking and sounding more and more like its famous American counterpart, especially in the evening.<sup>178</sup>

### **Response from News Corp**

16. News Corp told us that talk and opinion driven programming have been part of ANC's strategy since 2010. News Corp provided us with evidence to show this was the case. All of this evidence predated News Corp's acquisition of ANC. News Corp told us that ANC has not implemented any materially new strategies since it had acquired the business in December 2016. Table 11 provides News Corp's own analysis of its TV schedules, showing the amount of opinion-led programming has been broadcast on Sky News Australia between 2015 and 2017.

**Table 11: Number of hours of live opinion shows from 2015 to 2017**

	2015	2016	2017
Number of hours of live opinion shows	[REDACTED]	[REDACTED]	[REDACTED]

Source: News Corp.

17. News Corp's analysis demonstrates that there has been a [REDACTED]% increase in the number of hours of opinion-led programming on Sky News Australia between 2016 and 2017. Between 2015 and 2016, the number of hours of opinion-led programming increased by [REDACTED]%.

### **Analysis of Sky News programming schedules**

18. In addition to the scheduling analysis provided by News Corp, we asked News Corp to provide us with details of TV schedules for the calendar year 2016 and January 2017 to November 2017) for Sky News Australia.<sup>179</sup> We analysed these schedules to determine whether there had been any change in the frequency in broadcasting of these opinion-led programmes since the transaction.<sup>180</sup>

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<sup>177</sup> Dennis Muller (Media Commentator), Mark Day (Columnist for The Australian), Paul Barry (host for ABC), BuzzFeed (quoting long term Sky News presenters who wished to remain anonymous).

<sup>178</sup> [ABC Media Watch Paul Murray's spectacular Sky dummy spit.](#)

<sup>179</sup> Schedules from October and November 2017 were subject to change.

<sup>180</sup> We compared January to November 2016 to January to November 2017 to take into account the fact that the transaction took place in December 2016.

19. News Corp told us that the main opinion programmes broadcast on Sky News Australia are Paul Murray Live, PML Overtime, The Bolt Report, Jones & Co, and Outsiders. We used these programmes, as well as others featuring Paul Murray and Andrew Bolt, as the 'opinion talk shows' for our analysis.

#### *Comparison between 2016 and 2017*

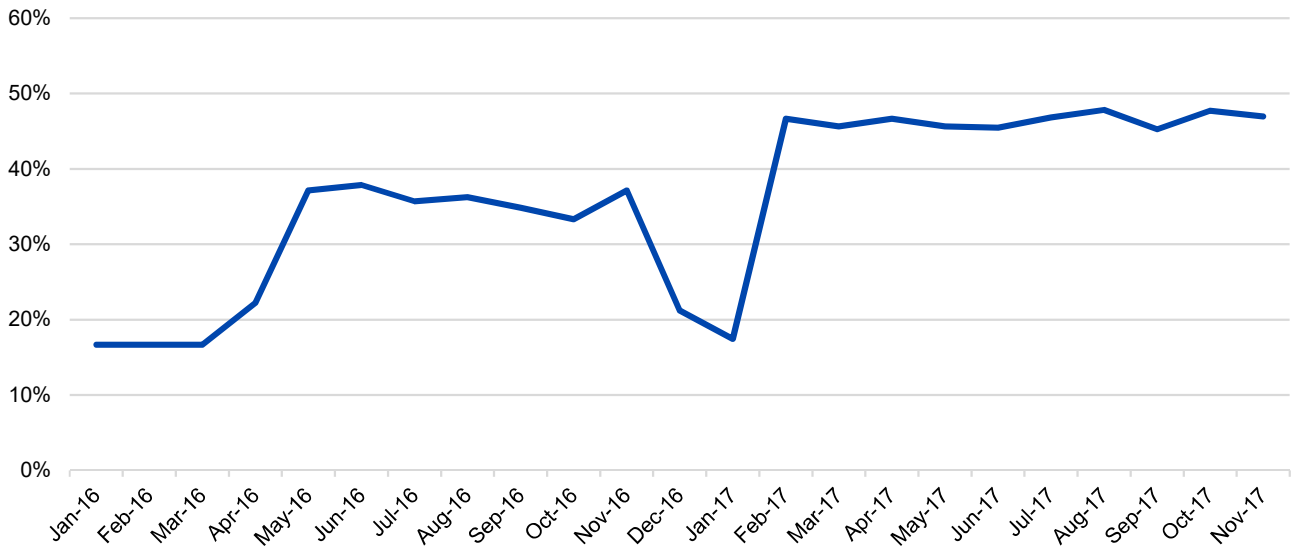
20. We compared the number of broadcast hours of opinion talk shows between 2016 and 2017, focusing our analysis on the programmes shown at peak times.<sup>181,182</sup>
21. Figure 30 and Figure 31 show that there has been an increase in the number of hours broadcast of these opinion talk shows, on weekdays and weekends. Our analysis differs from News Corp's in that it analysed data from an extended time period, and it included all programmes categorised as opinion-led, whereas we only used the top five programmes. Although this analysis is not the same as News Corp's, the increase we find between 2016 and 2017 is reasonably consistent with News Corp's analysis.

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<sup>181</sup> We compared broadcast hours for the period January to November 2016 with 'January to November 2017 for consistency.

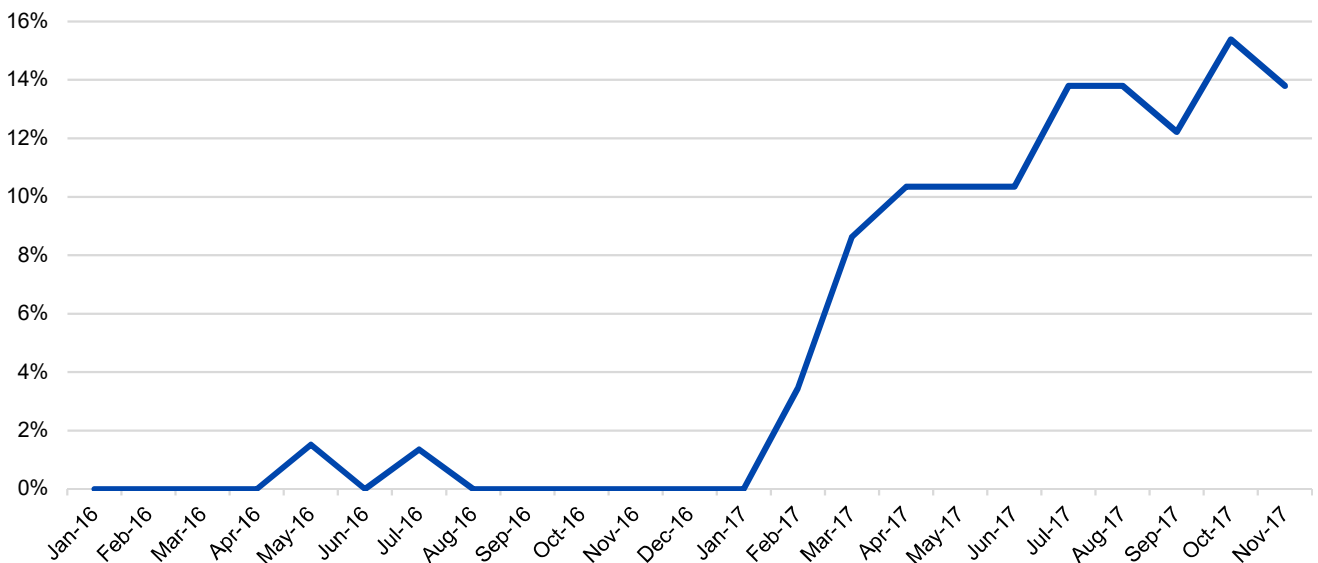
<sup>182</sup> From 6.00pm to midnight on weekdays, and 9.00am to midnight on weekends.

**Figure 32: Total hours of opinion shows broadcast on Sky News Australia in peak time on weekdays (starting from 6pm), as a percentage of total peak broadcasting hours**



Source: CMA analysis of Sky News Australia TV schedules.

**Figure 33: Total hours of opinion shows broadcast on Sky News Australia in peak time on weekends (starting from 9am), as a percentage of total peak broadcasting hours**



Source: CMA analysis of Sky News Australia TV schedules.

22. Some of the shows included in the analysis are replays. News Corp provided us with data which showed the number of hours of shows that were replays, as shown in Table 12. As we cannot identify which programmes are replays, some of these replayed shows may appear in the analysis.

**Table 12: Number of hours of opinion shows broadcast on Sky News Australia that were replays**

2015	2016	2017
[REDACTED]	[REDACTED]	[REDACTED]

Source: News Corp.

23. We provide a breakdown of the five programmes outlined that News Corp told us were opinion-led programming, as well as other shows which include hosts Paul Murray and Andrew Bolt.
24. Between 2016 and 2017, we note that the total number of hours of programmes hosted by Paul Murray on Sky News Australia during prime time increased by 47%:
- (a) the number of hours of Paul Murray Live broadcast decreased by 66 hours between 2016 and 2017;
  - (b) PML Overtime – a second hour of Paul Murray was introduced in January 2017;
  - (c) there was a temporary reduction in the number of hours of Paul Murray Live broadcast on Sky News Australia in December 2016 and January 2017, which accounts for the large dip for these months in Figure 30.
25. The Bolt Report first aired on Sky News Australia in April 2016, prior to the News Corp transaction. The number of hours of programmes hosted by Andrew Bolt increased by 43%:
- (a) hours of The Bolt Report per month remained fairly constant between 2016 and 2017;
  - (b) there was a temporary reduction in the number of hours of The Bolt Report broadcast in December 2016 and January 2017, accounting for the dip for these months in Figure 30.
  - (c) a new programme – ‘Bolt Report Sunday’ – featuring Andrew Bolt first aired on Sky News Australia in July 2017. We note that this programme was aired during the day.
26. In response to our questions, News Corp told us that Outsiders first debuted in December 2016. The addition of Outsiders to the schedule led to an increase in the number of hours of opinion-led programming appearing on weekends between the end of 2016 and the beginning of 2017, from 0 to 3% in February 2017. This is shown in Figure 31.
27. Jones & Co. has been on air since April 2016, and replaced the programme Richo & Jones. The number of hours of Jones & Co. broadcasts on weekdays has remained fairly constant, however Jones & Co. started being broadcast on weekends in March 2017, leading to a further rise in the amount of hours of opinion-led shows broadcast on Sky News Australia on weekends, as shown in Figure 31.

### **2018 scheduling announcement**

28. On 30 October 2017, a media release was put out by Sky News, detailing its plans for 2018.<sup>183</sup> These plans included an expanded evening schedule, and a new broadcast and business centre for Sky News Business based at News Corp Australia HQ. With respect to Sky News Australia, the media release said ‘Sky News will continue to deliver more live national affairs programming than any other Australian network, featuring the best award-winning journalists with exclusive insights and fearless opinions...’. The changes to programming include the extension of Paul Murray Live to five nights a week.

### **Our views**

29. Our analysis of the TV scheduling indicates that there has been an increase in the number of hours of opinion-led programming/right-wing personalities broadcast on Sky News Australia since the transaction. However, we note that News Corp’s analysis of its TV schedules shows suggests that the increase was more significant between 2015 and 2016, ie before the acquisition by News Corp. As discussed later, other evidence suggests that this change in strategy had already started to take place before the acquisition in December 2016.
30. An article for The Guardian online in Australia in March 2016 noted that the appointment of Andrew Bolt would ‘push the channel even further in the direction of Rupert Murdoch’s Fox News...’.<sup>184</sup> It also noted that Sky News had to be provocative in order to compete with ABC. [✂].
31. An article from an Australian media and marketing discussion website from October 2016 also noted:
- For most of its history, Sky News remained mainly bulletin based. But over the past five years, it has increasingly turned over its evening programming to panel-based discussion shows, mainly featuring right-leaning commentators such as Andrew Bolt and Paul Murray.<sup>185</sup>
32. While it appears as if the ‘stable of commentators’ on Sky News Australia are primarily ‘right-leaning’, Denis Muller also noted that a range of other viewpoints are provided, including from respected independent journalists. Denis Muller noted that this is not found on Fox News in the US, and that is a

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<sup>183</sup> Sky News media release 30 October 2017.

<sup>184</sup> The Guardian, *Straight news or Fox news? Andrew Bolt’s show sends Sky further right on the night*.

<sup>185</sup> Mumbrella.

significant difference between the two. He noted that someone ‘who watched only Fox News would get a very distorted view of the world. That is not true of Sky. [Sky contains] a range of perspectives, even on major stories with an ideological bent...’.<sup>186</sup>

33. Third parties told us that programming on Sky News Australia is veering away from the Australian Code. However, we note that there have been no complaints, investigations or breaches with regards to accuracy and impartiality for any Sky News Australia shows between 2010 and 2017. Accuracy and impartiality of news reporting are both requirements in the Australian Code.<sup>187</sup> We have no evidence to suggest that the reputed change in channel management has led to an increased risk of non-compliance with the Australian Code. We consider this in more detail in our assessment of broadcasting standards public interest consideration (see chapter 16 of our final report).

### **Effects of combining ownership of ANC broadcasting with News Corp’s newspapers in Australia**

34. In addition to the third party concerns set out earlier, we also consider the acquisition of ANC relevant to the assessment of the effects of cross-media ownership on media plurality.
35. News Corp Australia owns or has material control over 21 newspaper titles, and one news website:<sup>188</sup>
- (a) The Australian, a national newspaper title;
  - (b) 13 ‘Metro’ newspapers that are produced in different cities in Australia;
  - (c) seven regional newspapers; and
  - (d) news.com.au (online news only).
36. At the time of the acquisition of ANC, News Corp already owned Fox Sports Australia, and as mentioned earlier also has a 50% share in Foxtel.
37. Laws exist in Australia that govern how much control any one person can have over the Australia media (TV, radio and newspaper). The Australian Communications and Media Authority (ACMA) is responsible for monitoring

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<sup>186</sup> [The Conversation, Sky News is not yet Fox News, but it has the good, the bad and the uglies.](#)

<sup>187</sup> [ACMA, Television Investigation Reports.](#)

<sup>188</sup> [News Corp Australia Brands.](#)

and responding to complaints about control and ownership arrangements of the Australian media that potentially raise concerns under Australia's Broadcasting Services Act 1993. The acquisition of ANC by News Corp Australia was not the subject of an investigation into media control issues.<sup>189</sup>

### ***Media landscape in Australia***

38. The Reuters Institute Digital News Report 2017 stated that there are two main players in print ownership in Australia – News Corp Australia and Fairfax Media. It also stated that Australia features one of the highest concentration of print ownership of any Western democracy.<sup>190</sup>
39. Figure 34 produced by ACMA, provides a snapshot of media ownership (TV, radio and newspapers) in Australia. It shows that a handful of corporations and interconnected family interests control much of Australia's media.<sup>191</sup>

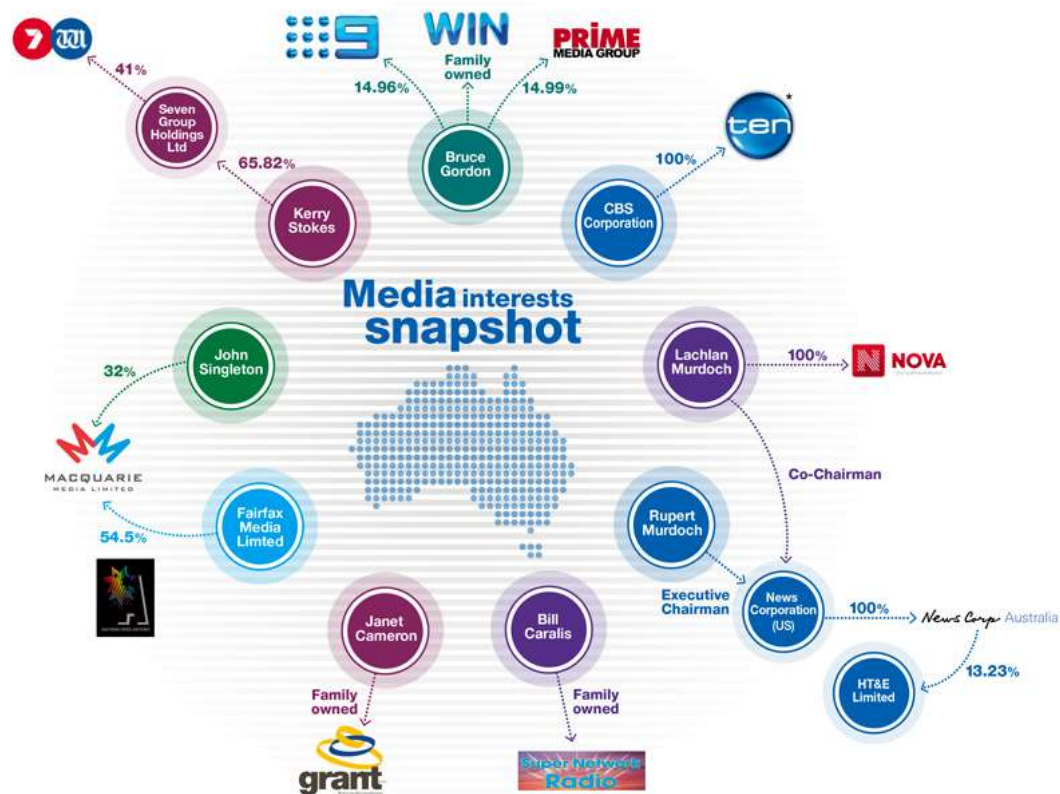
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<sup>189</sup> ACMA, *Ownership and Control Investigation Reports*.

<sup>190</sup> Reuters Institute, *Digital News Report*.

<sup>191</sup> The Conversation, *FactCheck: is Australia's level of media ownership concentration one of the highest in the world?*



Figure 34: Media interests snapshot in Australia<sup>192</sup>

\*Ten Network Holdings Limited was removed from the ASX official list on 24 November 2017 after it was acquired by CBS Corporation.

Current at 1 December 2017

Source: ACMA

### Change in the level of influence of the MFT

40. As noted in chapter 11 of the final report, cross-media ownership may increase the influence of a media owner by aligning the editorial outlook, but influence could increase even without a degree of editorial alignment (by reaching different audiences and increasing the scope of issues over which they can influence the public opinion).
41. Before the acquisition, the MFT may have been able to exercise its influence on ANC, through:
  - (a) Sky Plc's 33.3% stake in ANC; and
  - (b) News Corp's (US) 50% stake in Foxtel.

<sup>192</sup> ACMA Media Interests Snapshot.

42. Since the acquisition, the potential for the MFT to influence content on ANC has increased as it now has full control. The potential for the MFT to influence content through Foxtel remains unchanged.
43. Foxtel told us that it is rarely able to influence the content or scheduling of programmes broadcast on channels that are not produced by it. Decisions made about channels and content are made by Foxtel, and where necessary the Foxtel board.
44. However, we note that the CEO of Foxtel has previously held positions at News Corp Australia, and several board members also work for News Corp. Therefore, it is possible that News Corp Australia could have some influence through Foxtel, in instances where Foxtel are able to influence channel content, although we have not received any evidence to support this view.
45. We sought to observe whether there has been any degree of editorial alignment between News Corp Australia newspapers and Sky News Australia since the acquisition, by reviewing evidence on the Australian media, questions to third parties including academic and journalists and evidence from News Corp.

### ***Evidence of alignment***

46. The MFT, through various businesses, controls a large amount of the media landscape. Timothy Dwyer, an Associate Professor and Chair of the Department of Media and Communications at the University of Sydney, told us that although Sky News Australia can only reach around a third of the TV viewing market, it is popular with the ‘business community and the political elites’, and in that sense, it is disproportionately influential.
47. Research carried out in Australia on the topic of News Corp Australia’s relationship with the Australian labor government showed that News Corp Australia newspapers all campaigned the same way in the 2007 and 2013 Australian elections.<sup>193</sup>
48. It appears that Sky News Australia had a similar stance in the 2013 general election. Shortly after the election, an Australian media website noted that ‘Like News Corp’s press outlets, Sky [was] transparent about its anti-ALP (Australian Labor Party) bias, with presenters such as Paul Murray functioning like tabloid cheerleaders for the Coalition in the campaign’, though it did note

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<sup>193</sup> [Kick this mob out: The Murdoch media and the Australian Labor government \(2007 to 2013\)](#).

that ‘the channel provided important moments of critical scrutiny of both sides’.<sup>194</sup>

49. Third parties told us that many News Corp columnists appear on Sky News Australia.<sup>195</sup> This could mean that the same viewpoint was being shared across News Corp Australia newspapers and the Sky News Australia shows that these journalists appear on. However, this appears to have been the case even before the acquisition, as in March 2016, an article posted on The Guardian Online noted: ‘Sky has always had a close connection to News Corp and its journalists. It even had purpose-built studios in the newsrooms at the Australian and the Daily Telegraph (both News Corp owned papers)’.<sup>196</sup> This suggests that it is likely there was some editorial alignment between Sky News Australia and News Corp Australia newspapers, before the acquisition.
50. Reflecting this, Timothy Dwyer told us that there appeared to be a high degree of editorial alignment pre acquisition, and that the acquisition had further consolidated and integrated Sky News within the operations of News Corp Australia, noting that since the acquisition, there has just been ‘more of the same News Corporation news voice’.
51. In addition to the already close relationship between Sky News Australia and News Corp, on 6 February 2017 The Australian newspaper (owned by News Corp Australia) announced there would be more integration between News Corp papers and Sky News. News Corp told us that the Sky News channels and News Corp’s newspaper titles remain separate news organisations, but there is some cross-promotion (for example putting promotional material in newspapers for the Sky News channels), and talent sharing, however this cooperation started under arrangements that pre-dated the acquisition. News Corp told us that the integration that has taken place as a consequence of the acquisition has been the build-out and commissioning of a TV studio for Sky News Business at News Corp’s Holt Street premises.

### ***Summary on effects of cross-media ownership in Australia***

52. It appears that a ‘News Corp voice’ is present on Sky News Australia. However, a review of the evidence we received suggests that this was apparent before the acquisition.
53. The acquisition took place just over a year ago, so we do not have enough information at this point to assess the degree of editorial alignment that may

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<sup>194</sup> SBS News comment – *Election 2013 the role of the media*.

<sup>195</sup> CPBF submission.

<sup>196</sup> The Guardian, *Straight news or Fox news? Andrew Bolt’s show sends Sky further right on the night*.

or may not have arisen from this acquisition. However, there is evidence of News Corp aiming to bring its news operations closer together.

## Appendix K: Qualitative evidence on political influence

1. We set out in chapter 11 of the final report, a summary of the qualitative evidence from third parties that are or were involved in the political process, on why politicians meet with the media and which media organisations are the most influential. This appendix sets out these views in more detail.
2. As noted in chapter 11, we consider that these views indicate that politicians remain principally concerned with the traditional media and that, reflecting the numbers in our analysis of the meetings noted earlier, those news providers controlled by the MFT already play a significant role. For example:
  - (a) Lord Falconer told us that we ‘should be under no illusions about how absorbed politicians are [by the media]’;
  - (b) a former senior political adviser, [X], told us that politicians still consider how certain policies would land with the press. Politicians would court journalists – socially or through offering exclusives with the understanding that more would follow if ‘written up fairly’;
  - (c) Sue Beeby, previously adviser to George Osborne<sup>197</sup> told us that the reaction of the media – as vocal representatives of their readers’ views – was often considered when government was thinking about how to present policy. Ms Beeby noted that ministers most frequently met with newspaper and broadcast editors rather than media owners often to explain policy announcements or complex issues in more detail;
  - (d) a former senior political adviser told us that politicians and their advisers are concerned with getting their messages accurately and fairly represented by the media. Their overwhelming focus is therefore on crafting their messages clearly and ensuring that the editors and journalists who create media content understand them and reflect them. Governments consider the merits of a decision and the likely reaction of the public. Governments did consider the reaction of specific newspapers because this will affect how decisions are presented to newspaper readers (the reaction of broadcasters does not tend to be considered in the same way given the constraints they are under);
  - (e) Baroness Gabrielle Bertin, previously Director of External Relations at No.10,<sup>198</sup> told us that politicians from all parties feel they need to have a

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<sup>197</sup> Prior to this, Ms Beeby was senior adviser to Jeremy Hunt at DCMS and the Department of Health, and a press officer in the Conservative Party.

<sup>198</sup> Prior to this, Baroness Bertin was Press Secretary to David Cameron as both Prime Minister and Leader of the Opposition.

strong relationship with media organisations given the desire to get messages across to the public;

- (f) Baroness Rosalind Grender, previously acting Deputy Director of Communications for the government,<sup>199</sup> told us that:

On the whole politicians and their advisers are open and available to a wide range of reporters because that is one of the ways of getting across their achievements or explaining their failures to a greater audience. There are inevitably stronger relationships with some [...] Editors, in particular, are in an unusual position when they meet senior politicians. They often have the privilege of the journalist: an 'off the record' or 'for background' conversation, but at the same time they are CEOs whose profitability can be affected by a decision at the next budget. Often, however, they are not as accountable and the meetings are not on the record in a way they would be if an industrialist were in the room.

- (g) Baroness Grender added that politicians of all parties were keen to ensure that media coverage of them was fair (inevitably, politicians will gravitate towards sympathetic newspapers and vice versa), noting the significance of the 'news grid' in trying to shape the media narrative, and that the UK print media remains a significant player due to its breadth and reach.

3. Because of the focus on messaging, audience size was generally considered as indicative of importance:

- (a) a former senior political adviser said that politicians were particularly motivated to talk to and influence news providers with the greatest number of readers/viewers (ie voters). TV was probably considered the most influential media due to its ease of access, likelihood of the public to view it, and the 'compelling nature' of visual imagery. This was followed by social media, tabloids and then broadsheets;
- (b) Ms Beeby told us that TV was the most influential source of news (terrestrial bulletins in particular as they picked up viewers watching other programmes). This was followed by social media (which politicians saw as important for direct communication with voters), then tabloids, radio (particularly The Today Programme which set the agenda for the day and LBC with a wider audience), regional broadcast media, broadsheets, 24-

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<sup>199</sup> Prior to this, Baroness Grender was speechwriter to Paddy Ashdown and Director of Communications for the Liberal Democrats.

hour news (with an ability to set the agenda for the day) and finally regional and local papers;

- (c) a former senior political adviser told us that politicians and their advisers are concerned about media outlets broadly in proportion to audience size, with the most attention paid to the BBC and ITV (social media may be starting to catch up with the influence of these two);
- (d) Baroness Bertin told us that the main focus was with those with the biggest audiences, and the biggest 'cut through' was seen to be via TV, particularly the 6.00pm and 10.00pm BBC and ITV bulletins as they were one of the few occasions with a single mass audience for current affairs and political commentary. Social media and online news was becoming increasingly important.

4. Consequently, those organisations with the highest audience reach were seen as the most important (and influential) news providers. Overall, given the importance of size, the BBC was seen as the most influential media organisation (ITV's news bulletin was also mentioned). However, others highlighted the importance of newspapers, particularly The Sun, The Daily Mail and The Times:

- (a) a former senior political adviser told us that the BBC was seen as the most influential brand (and had best access to politicians), followed by papers such as The Sun, The Daily Mail and The Times. This selection was mainly influenced by the number of readers and viewers, but the likelihood of getting a good hearing also played a role and politicians would be more inclined to meet with news providers that share their political leaning;
- (b) Ms Beeby told us that the BBC was the most influential organisation because it was seen as trusted and because of its reach across TV, radio, online and social media platforms. However, tabloid newspapers were also influential due to their ability to campaign on behalf of readers;
- (c) a former senior political adviser told us that politicians and their advisers are concerned about media outlets broadly in proportion to audience size, with the most attention paid to the BBC and ITV (social media may be starting to catch up with the influence of these two);
- (d) however, Baroness Greender said that 'The BBC, despite its very broad reach is sometimes compromised by its reliance on newspaper agendas and commentators'. Baroness Greender suggested that the accounts by Alistair Campbell in his diaries regarding Tony Blair's 'reverence' of The Daily Mail reflect how concerned governments are with the media, as do

accounts in David Laws' memoirs of David Cameron's concern about the Leveson Inquiry damaging the relationship between the Conservatives and what he viewed as important papers such as The Sun and The Daily Mail;

- (e) Lord Falconer noted that 'the thing that really absorbs politicians is how does the 6 o'clock and the 10 o'clock news on the BBC and the ITV cover things', but qualified this by stating that 'the newspapers set the agenda for the radio and the TV.'<sup>200</sup>
- (f) the Rt. Hon Ed Miliband and the Rt. Hon Kenneth Clarke suggested that newspapers were still the key media providers that politicians were concerned with (Mr Clarke noted that 'political leaders are obsessed with newspapers');
- (g) Ms Beeby noted that tabloid papers were also influential due to their ability to campaign on behalf of readers, and a former senior political adviser noted that governments did consider the reaction of specific newspapers because this will affect how decisions are presented to newspaper readers (the reaction of broadcasters does not tend to be considered in the same way given the constraints they are under;
- (h) former Prime Minister Gordon Brown expressed a view that:

[N]ewspaper coverage remains central in setting the media agenda for the day, despite declining circulation numbers [...] All recent evidence is that the Murdoch Group have not changed [...] trying to influence voters and the general public to support causes that may be of commercial benefit, as well as political benefit to their company.

- 5. Finally, respondents indicated that news providers had at least some influence on the political agenda, and the role of those news providers controlled by the MFT (and The Daily Mail) was particularly highlighted:

- (a) Baroness Grender also noted the importance played by The Times in reforms to adoption, and The Daily Mail in relation to the introduction of the plastic bag levy as clear examples of the papers at editorial level seeking to influence the agenda (although noted there was no such equivalent in broadcasting);

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<sup>200</sup> [Hearing with Ed Miliband et al.](#)



- (b) Baroness Bertin said that it was normal for newspapers and media organisations to run campaigns which they believed to be in the public interest and highlight issues which the public believes requires a change in policy (for example, The Daily Mail campaign on plastic bags). These campaigns would seek to influence public opinion as well as politicians, but would only succeed if they were the right thing to do;
- (c) Ms Beeby said that there were cases where policies were changed as a result of external pressure – as was the case with the tax credit changes in 2015 – but this was a result of public, parliamentary and media pressure and it was the combination of all three things that brought about the change although, primarily it was due to parliamentary pressures, that had been heightened by the media and public reaction;<sup>201</sup>
- (d) Mr Miliband indicated that titles owned by the MFT were still particularly influential, noting that:

In October 2015, after the Conservatives won the General Election, The Sun, rather surprisingly, decided to launch a campaign against George Osborne's changes to the Tax Credits. These changes had been around for some time. Within a month he had changed his policy. I am not saying it is simply because The Sun did it, but choosing to highlight an issue, choosing to drive the issue through the public agenda, definitely has an impact on people's perceptions and the salience of that issue.<sup>202</sup>

- (e) former Prime Minister Sir John Major expressed a view that:

Our British political system is confrontational and non-consensual. This leads to media stories shaping the political agenda. This is especially true if an original report is picked up by a large number of other media outlets. When this occurs a perfect storm can be created out of very little. The media knows this – and feeds on sensation because it attracts the electronic audience and promotes newspapers sales. Apart from their commercial interest, the point is that the media can, and does, set the political agenda, not least through the 'slant' they give the news. This is not a new phenomenon – it is as old as printer's ink – but it is more prevalent today because of the growth and changing nature of the

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<sup>201</sup> Ms Beeby gave the example of the government scrapping tax credit cuts in 2015 as a result of pressure from these three, but also noted that these had failed to change policy relating to the spare room subsidy/bedroom tax.

<sup>202</sup> [Hearing with Ed Miliband et al.](#)

media, and most especially the tabloid newspapers. In this fashion newspapers can:

- (i) set the agenda – even a partisan agenda;
- (ii) undermine or support political parties and/or their policies;
- (iii) advance or damage the individual career or reputation of anyone in the public eye.

It is noticeable that ‘friendlier’ coverage is given to those who share the convictions of the newspaper itself – sometimes coverage is shamelessly partisan.

Sir John Major went on to say that:

I do know that some who oppose it have kept silent for fear of subsequent hostile press coverage in the existing Murdoch titles. One said to me ‘I know this is not heroic, but it is prudent’. Whether justified or not, the very fact that such a fear exists suggests the present power of the Murdoch media is already too great.

As part of his response to our request for information, Sir John Major included his submission to Ofcom, which also noted that:

he is aware that other public figures who wish this acquisition to be denied have, nonetheless, decided against submitting evidence to Ofcom. As one put it [...] ‘If I put my head above the parapet over this bid, I may live to regret it.’ Clearly, Sir John cannot know whether this fear – presumably of retaliation is justified. However, the very fact that such a view is held – and inhibits the submission of evidence – surely argues against the approval of this acquisition.

## Appendix L: Breaches of the Broadcasting Code

### Introduction

1. In assessing the Parties' compliance with the Broadcasting Code, we considered the number and nature of breaches by the Parties and other comparable broadcasters. This appendix gives a breakdown of relevant breaches, including details of the programme and a summary of the issue.

### Details of breaches of the Broadcasting Code

#### *Breaches by Fox News*

2. Figure 35 provides a breakdown of the breaches of the Broadcasting Code by Fox News. The five breaches relating to section five and section six are highlighted later. These five breaches by Fox News occurred between April 2016 and May 2017.

**Figure 35: Breaches of the Broadcasting Code recorded against Fox News between 2013 and November 2017**

<i>Ref</i>	<i>Programme</i>	<i>Decision</i>	<i>Issue of Broadcast and On Demand Bulletin</i>	<i>Date of publication</i>	<i>Summary of issue</i>
1	Studio B with Shephard Smith	Breach	222	21/01/2013	Live segment of car chase in which footage was shown of the driver committing suicide by shooting himself in the head. Programme was shown before the watershed.
2	Fox Extra	Breach	227	08/04/2013	Promotion of IAMS pet food in programme included two interviews with 'experts' on Islam and terrorism which contained facts that were misrepresented in the programme.
3	Justice with Jeanine Pirro	Breach	288	21/09/2015	Programme discussed the EU Referendum issues on the day of the vote while the polls were still open.
4	Your World with Neil Cavuto	Breach	311	22/08/2016	Contributor made a series of statements setting out his strong opposition to abortion and there were no other viewpoints included.
5	Fox Extra	Breach	311	22/08/2016	Programmes featured various statements which either strongly criticised Hillary Clinton and her presidential campaign and/or gave support to the campaign of Donald Trump.
6	Hannity	Breach	317	21/11/2016	

Ref	Programme	Decision	Issue of Broadcast and On Demand Bulletin	Date of publication	Summary of issue
7	Fox & Friends	Breach	319	19/12/2016	A programme segment entitled 'Mega Morning Deals' comprised a sequence of discussions about a number of products exclusively discounted for Fox and Friends viewers.
8	Fox Extra	Breach	324	06/03/2017	A series of two minute Fox Extra programmes contained promotional references to a number of commercial enterprises.
9	Hannity	Breach	341	06/11/2017	The programme covered President Donald Trump's Executive Order issued on 27 January 2017 restricting travel from seven majority-Muslim countries. This coverage was found to have not provided a sufficiently balanced view.
10	Tucker Carlson	Breach	341	06/11/2017	The discussion of the reaction of the UK authorities to the Manchester terrorist attack on 22 May 2017 was not presented with due impartiality.

Source: CMA analysis of Fox data.

3. Details of the five breaches recorded against Fox News relating to sections five and six of the Broadcasting Code are given here.
4. The first of these breaches related to content broadcast on Fox Extra, which are brief editorial programmes that cover a range of subject matters and are inserted into the international feed in place of the US advertisements. On 7 April 2016, a programme lasting two minutes and 34 seconds featured a commentator (Judge Andrew Napolitano) giving his views on the subject of abortion. Ofcom noted that Judge Napolitano's anti-abortion remarks clearly extended beyond a solely US-focused discussion about a particular court case or news story. Abortion was criticised in general terms using highly emotive language, a subject which was relevant to viewers in the UK and in Ofcom's view, a matter of public policy that engaged the impartiality provisions of the Broadcasting Code. Ofcom acknowledged that the viewpoint on abortion put forward in the programme by the judge was seen through the prism of the US legal and political system, but even after taking into account the subject and nature of the programme, Ofcom concluded, on balance, that the programme did not preserve due impartiality.
5. The second of these breaches concerned section six of the Broadcasting Code (special impartiality at elections and referendums). Ofcom received a complaint that the 'Your World with Neil Cavuto' programme – a weekday

business and financial news programme – was broadcast in the UK at 9.00pm GMT on the day of the EU referendum and had discussed and analysed issues relating to the referendum while the polls were still open in the UK. Rule 6.4 requires broadcasters to refrain from discussion and analysis of referendum issues while the polls are open. The purpose of this rule is to ensure that broadcast coverage on the day of a referendum does not directly affect voters' decisions. Ofcom considered that the programme had clearly contained a number of statements which constituted discussion and analysis of referendum issues while the polls were still open. While it recognised that the programme was 'prepared with a view towards an American and the expectations of what an American audience would find interesting', Ofcom concluded that as an Ofcom licensed service, Fox News must comply with all relevant requirements of the Broadcasting Code, including rule 6.4. It further noted that it had regard to the fact that the prohibition under this rule was not qualified in any way, such that it would not be possible for a broadcaster to justify the material by context.

6. The third of these breaches related to programming content that infringed both section five and section six of the Broadcasting Code. During routine monitoring of Fox News, Ofcom identified three one-hour programmes, broadcast at 3.00am (UK time), on the 2, 5 and 6 of August 2016, in which a number of highly critical statements were made about Hillary Clinton's policy platform and past political actions. In addition, it included various statements that were described as supporting the policies of Donald Trump. Ofcom acknowledged that viewers would have expected programmes on Fox News to address controversial issues, and from the perspective that was generally more supportive of the US Republican Party. However, even taking into account this context, Ofcom concluded that the content did not preserve impartiality. Ofcom concluded that the material had clearly breached rule 6.1, rule 5.11 and rule 5.12 of the Broadcasting Code.
7. The fourth of these breaches related to a programme which covered President Donald Trump's Executive Order issued on 27 January 2017 restricting travel from seven majority-Muslim countries (Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen). It was aired on 31 January 2017, at 6.15am (UK time). Fox submitted to Ofcom that the discussion around the Executive Order was not a matter of major political or industrial policy and therefore the impartiality requirements did not apply. In its correspondence with Ofcom, Fox also submitted:

Fox News understands 'due impartiality' to mean that programming must not inappropriately favour a particular perspective taking into account the context. In this case the

relevant factors to take into account when considering context (as set out in section two of the Code) are:

The editorial of the programme – this Programme is renowned for its challenging material and a presenter who has strong and opinionated views;

The service on which it was broadcast – a US channel, simulcast into the UK;

The degree of harm or offence likely to be cause – the audience in the UK averages around 2,000 simultaneous viewers who appreciate that the Programme is transmitted from the US, and therefore the degree of harm (or offence) that is likely to cause will be minimal, if any;

The likely size and expectation of the audience – as stated earlier the size of the audience is extremely small and those viewing the channel are likely to appreciate its context; and

Bringing the nature of the content to the attention of the audience – Fox News considers that there is adequate information for those viewing this channel to understand its context.

8. Ofcom disagreed with Fox's analysis and concluded that the making of the Executive Order was a matter of major political and industrial controversy. Ofcom found Fox to be in breach of rules 5.9, 5.11 and 5.12 of the Broadcasting Code.
9. The fifth and most recent breach recorded against Fox News related to an episode of 'Tucker Carlson: tonight', which was broadcast on 25 May 2017. In the episode Mr Carlson interviewed two people (Nigel Farage and Mark Steyn) to discuss the bomb attack on 22 May 2017 in Manchester. The programme included highly critical statements about: Theresa May; the Deputy Mayor of Manchester, Baroness Hughes; the Chief Constable of Greater Manchester, Ian Hopkins; the UK government; and the UK authorities, including accusations that particular individuals and public bodies had done nothing to: counter terrorism; stop radicalisation; protect citizens from terrorism; or protect 'thousands of underage girls' from rape and abuse. Further, that the inaction of public leaders was motivated by political correctness; they valued how people saw them over the lives of children; and they were forcing an 'official lie' on citizens, which was 'totalitarian' and 'wicked'. There was no reflection of the views of the UK government or any of the authorities or people criticised, which Ofcom said it would have expected given the nature and amount of criticism of them in the programme. The

presenter did not challenge the views of his contributors, instead, he reinforced their views. Fox, in its response to Ofcom's initial letter, accepted that the issue was a 'major matter', ie a breach of rules 5.11 and 5.12 of the Broadcasting Code. Fox admitted that the programme 'could have benefitted from an alternative perspective' and noted that its 'key editorial staff and legal staff received Ofcom training just before this episode was broadcast' and the broadcast had been 'aired before Fox News had put in place its new Ofcom compliance procedures'. Ofcom again found Fox to be in breach of rules 5.9, 5.11 and 5.12 of the Broadcasting Code.

### Breaches by Sky News

10. Figure 36 provides a breakdown of breaches of the Broadcasting Code by Sky News. The single breach relating to section six is highlighted.

**Figure 36: Breaches of the Broadcasting Code by Sky News between 2013 and 2017**

Ref	Programme	Decision	Issue of Broadcast and On Demand Bulletin	Date of publication	Summary of issue
1	Sponsorship of Sky News Weather Reports by Qatar Airways	Breach	223	04/02/2013	Sky's weather report of approx 60 secs including a 10-sec opening credit and a 5-sec closing credit - the opening credits didn't identify the sponsorship arrangement.
2	Cross promotion for Sky Sports	Breach	229	07/05/2013	Flashing images in 30-sec promo for Sky Sports (calendar pages turned rapidly in the style of a flick book).
3	Finspreads' sponsorship of The Financial Report, Sky News	Breach	237	09/09/2013	Spread betting company advertised outside of specialist financial channels or programming.
4	Sky News with Lorna Dunkley	Resolved	263	06/10/2014	Colin Brazier picked up two items from a victim's open suitcase during this live report at the crash site in eastern Ukraine of flight MH17.
5	Ian King Live	Resolved	290	12/10/2015	Presenter Ian King used 'f**k' because his microphone was not working before an interview. An apology was broadcast after and at end of programme.
6	Sky News with Niall Paterson	Breach	302	11/04/2016	'F**k the BNP' banner was shown during a news broadcast.
7	Sky News with Colin Brazier	Breach	302	11/04/2016	Graphic footage of hit and run shown before break, with no context provided.
8	Sky News Tonight	Resolved	327	20/02/2017	This relates to the airing of a placard 'Donald Trump is a c**t'.
9	Sunrise	Breach	334	12/05/2017	Sky failed to list all of the candidates standing in the Vauxhall constituency during a report on tactical voting.

Source: CMA analysis of Sky data.

### Breaches by Channel 4 News

11. Figure 37 provides a breakdown of breaches of the Broadcasting Code by Channel 4, specifically breaches relating to news and current affairs programmes.

**Figure 37: Breaches of the Broadcasting Code by news and current affairs programmes broadcast on Channel 4 between 2013 and 2017**

<i>Ref</i>	<i>Programme</i>	<i>Decision</i>	<i>Issue of Broadcast and On Demand Bulletin</i>	<i>Date of Publication</i>	<i>Summary of Issue</i>
1	Channel 4 News	Breach	273	16/02/2015	Inaccurate representation of the MPS and the Ellison Review.
2	The Political Slot	Breach	273	16/02/2015	Broadcast of Conservative MP discussing tax policy on day of a by-election.
3	Channel 4 News	Breach	277	20/04/2015	Inaccurately representing a Russian airplane as Latvian, during the Baltic Sea flying exercises.
4	Channel 4 News	Breach	295	21/12/2015	Shoreham Air Show. Naming the wrong victims.
5	Channel 4 News	Breach. Sanction imposed due to previous breaches.	336	11/09/2017	Report of Westminster terror attack. Incorrectly identifying the assailant.

Source: CMA analysis of Ofcom data.



## Appendix M: Fox Revised Firewall remedy

### OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC

UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 9 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

#### WHEREAS:

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (d) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (e) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (f) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (g) Whereas under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (h) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the Transaction.

#### 1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect (subject to the variation and termination provisions in section 5) from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

## 2. COMMITMENT TO MAINTAIN A NEWS SERVICE

- 2.1 As at the Closing Date, and subject to variation and/or termination under section 5, 21CF shall continue to maintain a Sky-branded news service received primarily in the UK for at least 10 years from Closing Date.
- 2.2 21CF shall maintain the Operational Net Investment in its Sky-branded news service at a level not materially different (taking into account cost and revenue inflation) from Sky's level of Operational Net Investment in Sky News as set out in the Schedule attached under **Annex 1** for 5 years from Closing Date, after which 21CF shall provide a further 5 years of investment in Sky News at a level to be determined at the time, taking into account market conditions and the level of investment required to maintain a Sky-branded news service.
- 2.3 21CF shall procure that Sky UK Limited or any successor company that provides the Sky-branded news service will maintain financial records showing the annual Operational Net Investment in its Sky-branded news service (**Sky News Investment Report**) for at least 10 years from Closing Date. The Sky News Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State].

## 3. SKY NEWS BOARD

- 3.1 21CF will establish an editorial board (the **Sky News Board**), which will become effective immediately following the Closing Date and will be part of Sky UK Limited or any successor company that holds the licence for the Sky News service (**Sky UK**), and which will:
- (i) comprise solely members who are Independent Expert Board Members, with such members:
    - (A) initially comprising two existing Sky independent directors and a third member nominated by the Sky independent directors who has senior editorial and/or journalistic experience; and
    - (B) subsequently comprising members selected by the Nominating and Corporate Governance Committee of the 21CF Board and approved by [the Secretary of State] as meeting the criteria of an Independent Expert Board Member;
  - (ii) be chaired by an Independent Expert Board Member with senior editorial and/or journalistic experience;
  - (iii) be entrusted with oversight of the compliance of the Sky News services with the Sky News Editorial Guidelines, including provisions relating to editorial independence in news reporting and compliance with Ofcom's Broadcasting Code;
  - (iv) operate under terms of reference which will stipulate that the Sky News Board will:
    - (A) be adequately resourced and have powers to review and investigate all areas within the remit of the Sky News Board;
    - (B) meet at least two times a year;
    - (C) consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines as

provided for under section 3.1(iii) above and report any such representations to the 21CF Board;

(D) advise the 21CF Board on any issues within its remit including the Sky News Board Approvals (as defined in section 3.3) below;

(v) keep a written record of any matters escalated to it by the Head of Sky News as provided for in section 4.2(iii) below, and provide a copy of any such record to the 21CF Board and [the Secretary of State] certified as accurate by one Independent Expert Board Member;

(vi) on an annual basis, subject to no written records having been made under section 3.1(v) in the preceding 12 months, prepare a statement confirming that no matters have been escalated to it by the Head of Sky News as provided for in section 4.2(iii) below, and provide a copy of any such statement to the 21CF Board and [the Secretary of State] certified as accurate by one Independent Expert Board Member; and

(vii) be quorate only if at least one Independent Expert Board Member with senior editorial and/or journalistic expertise is present.

3.2 21CF shall ensure that either:

(i) a summary of any report provided under section 3.1(v) above; or

(ii) a copy of any statement provided under section 3.1(vi)

(as the case may be) shall be included in its annual report.

3.3 21CF shall ensure that the following matters at Sky UK take place only with the approval of a majority of the Sky News Board:

(i) the appointment or removal of the Head of Sky News (with the Sky News Board having the right prior to any replacement of the Head of Sky News to nominate a candidate for appointment to the role);

(ii) the remuneration package of the Head of Sky News;

(iii) any material changes to the authority or reporting relationship of the Head of Sky News; and

(iv) any future changes to the Sky News Editorial Guidelines.

(together the **Sky News Board Approvals**).

3.4 21CF shall not make any subsequent amendments to the Sky News Board Approvals without the prior approval of the Secretary of State.

3.5 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or a member of the 21CF Board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (including the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services).

#### **4. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES**

- 4.1 As at the Closing Date, 21CF shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section 4.2 below and as attached at **Annex 2** to these undertakings (the **Sky News Editorial Guidelines**).
- 4.2 As at the Closing Date, 21CF shall ensure that the Sky News Editorial Guidelines specify that:
- (i) the Head of Sky News retains complete editorial control over all news and current affairs output, including the selection and running of news stories and any political comment and opinion broadcast on the Sky News services;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
  - (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee or officer of 21CF outside the Sky News editorial function to influence the selection or running of news stories or the political comment and opinion to be broadcast on the Sky News services, the Head of Sky News will escalate such matters to the Sky News Board.
- 4.3 21CF shall not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State].

#### **5. VARIATION AND TERMINATION**

- 5.1 These undertakings shall remain in force until such time as they are varied, released or superseded under the Order, or until such time as they lapse pursuant to section 2.1.
- 5.2 In the event of a material change of circumstances, the Secretary of State may, in response to a request from 21CF, vary or release one or more of these undertakings. Upon receipt of such a request, the Secretary of State shall consult the CMA on whether the change of circumstances identified in the request results in the adverse effects identified in the Secretary of State's Decision ceasing to apply.
- 5.3 The variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

#### **6. COMPLIANCE**

- 6.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:
- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

- 6.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.
- 6.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section 6.3.

## 7. PROVISION OF INFORMATION

- 7.1 21CF shall furnish promptly to [the Secretary of State] such information as [the Secretary of State] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## 8. INTERPRETATION

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.
- 8.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**21CF Parent Company**” means any parent undertaking of which 21CF is a subsidiary undertaking (“parent undertaking” and “subsidiary undertaking” having the meanings given to them in section 1162 of the Companies Act 2006);

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means the date on which 21CF acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

“**CMA**” means the Competition and Markets Authority;

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Head of Sky News**” means the individual responsible for setting editorial strategy and direction for Sky News’ digital, television and radio output, including the appointment and dismissal of senior Sky News employees (including presenters);

“**Independent Expert Board Member**” means a member of the Sky News Board who:

- has experience in the UK media sector;
- has not been an employee of 21CF, News Corp or any member of the same Group of Interconnected Bodies Corporate as 21CF or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the Sky News Board, a material business relationship with 21CF or News Corp either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship;
- has not received and does not receive remuneration from 21CF or News Corp (other than a fee paid by 21CF for their service as a member of the Sky News Board), does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of 21CF's or News Corp's pension scheme;
- does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies;
- does not represent a significant 21CF or News Corp shareholder; and
- has not served on the board of 21CF or News Corp within nine years from the date of their first appointment

“**MFT**” means the Murdoch Family Trust;

“**News Corp**” means News Corporation;

“**Ofcom**” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

“**Operational Net Investment**” means the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

“**Order**” means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

“**Secretary of State**” means Secretary of State for Digital, Culture, Media and Sport;

“**Sky**” means Sky plc;

“**Sky News**” means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and the Republic of Ireland and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business;

“**Sky News Editorial Guidelines**” has the meaning given to it in section 4.1 above;

“**Sky News Board**” has the meaning given to it in section 3.1 above;

“**Sky News Board Approvals**” has the meaning given to it in section 3.3 above;

“**Sky UK**” has the meaning given to it in section 3.1 above; and

“**Transaction**” means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own.

## ANNEX 1

## SKY NEWS OPERATIONAL NET INVESTMENT SCHEDULE

	FY 2016/17	Further details
	£m	
Revenues <sup>203</sup>	[X]	Includes: wholesale of Sky News channel [X]; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs <sup>204</sup>	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
<b>Operational Net Investment</b>	<b>[X]</b>	

<sup>203</sup> Does not include: Sky Media [X]% sales commission for provision of ad sales.

<sup>204</sup> Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.



## ANNEX 2

## UPDATED SKY NEWS EDITORIAL GUIDELINES

*2. Editorial independence of Sky News*

The Head of Sky News has complete editorial control over all news and current affairs output, including the selection and running of news stories and any political comment and opinion broadcast on the Sky News services.

**Instructions to Sky News Editorial Staff**

Subject to the compliance policies and procedures of the 21st Century Fox group (including those set out in these guidelines), instructions to Sky News editorial staff (including journalists) on editorial matters must be given only by the Head of Sky News (or designated deputy). You should not take instructions on these matters from anyone else.

**Attempts to influence**

In the event that anyone outside the Sky News editorial function, but within the 21st Century Fox group, attempts to influence you in the selection or running of news stories or any political comment and opinion broadcast on the Sky News services (or indeed you become aware of such an attempt on another member of Sky News editorial staff) you must report this immediately to the Head of Sky News (or designated deputy).

# Appendix N: Fox Ring-fencing remedy

## OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC

UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 9 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

### WHEREAS:

- (i) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (j) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (k) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (l) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (m) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (n) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (o) Under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (p) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

### 9. EFFECTIVE DATE OF THE UNDERTAKINGS

9.1 These undertakings shall take effect (subject to the variation and termination provisions in section [22]) from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

### 10. CREATION OF NEWCO

10.1 21CF shall incorporate NewCo as a private limited company, which will be a wholly owned subsidiary of Sky, at the Closing Date or as soon as reasonably practicable following the Closing Date, subject to any extension of time agreed with the consent of the Secretary of State.

- 10.2 21CF shall take (or procure the taking of) the following steps to achieve the formation of NewCo:
- (i) the formation of NewCo as a new private limited company incorporated under the laws of England and Wales as a Subsidiary of Sky; and
  - (ii) the establishment of the corporate governance arrangements set out in section [11] below.
- 10.3 On or as soon as reasonably practicable following the formation of NewCo, 21CF shall take (or procure the taking of) the following steps to achieve the transfer of the business of Sky News to NewCo:
- (i) the transfer of the business of Sky News (as set out in section [15] below) into NewCo in exchange for shares in NewCo; and
  - (ii) the entering into of the agreements between Sky and NewCo set out in sections [15.4 and 16] below.

## 11. CORPORATE GOVERNANCE OF NEWCO

- 11.1 21CF shall ensure that the corporate governance structure of NewCo shall be established as follows:
- (i) the articles of association of NewCo shall provide that the object of NewCo is to maintain a Sky-branded news service received primarily in the UK which will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code. The articles of association of NewCo shall be [in a form to be approved by the Secretary of State prior to the Effective Date]/[in the form attached as **Annex 1** to these undertakings];
  - (ii) the articles of association of NewCo shall provide that the NewCo Board shall:
    - (A) comprise solely members who are Independent Directors and consist of a [minimum of [5] Independent Directors and a maximum of [7]] Independent Directors, with such members;
      - I. initially comprising [3] existing Sky independent directors and [2] members nominated by the Sky independent directors. Each such appointment shall meet the definition of Independent Director contained in these undertakings;
      - II. each serving for a single, non-renewable term of not more than six years;
      - III. on the resignation or removal of an Independent Director, the remaining Independent Directors in office at such date shall nominate and appoint a new Independent Director to maintain at least the minimum number of Independent Directors of NewCo, if required. Any such newly appointed Independent Director shall be approved by the [Secretary of State/Ofcom/CMA] as meeting the criteria of an Independent Director;
    - (B) be chaired by an Independent Director with senior editorial and/or journalistic experience;

- (C) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present; and
  - (D) on each occasion where it seeks the [Secretary of State/Ofcom/CMA's] approval for the appointment of a new Independent Director, prepare a statement setting out the basis on which it considers the proposed appointee to meet the criteria of an Independent Director, and provide a copy of any such statement to the 21CF Board and [the Secretary of State/Ofcom/CMA] certified as accurate by one Independent Director;
- (iii) Material Transactions between NewCo and 21CF (as enlarged by the acquisition of Sky) shall require the approval of NewCo's audit committee. Material Transactions between NewCo and 21CF (as enlarged by the acquisition of Sky) involving amounts of £[5] million or more shall also require the approval of the NewCo Board;
  - (iv) the articles of association of NewCo shall provide that the NewCo Board and its committees shall have the appropriate balance of skills, experience, independence and knowledge of NewCo to enable them to discharge their respective duties and responsibilities effectively and that at least one Independent Director must have senior editorial and/or journalistic experience;
  - (v) the articles of association of NewCo shall provide that NewCo shall establish a subcommittee of the NewCo Board (the **NewCo Editorial Committee**) which will:
    - (A) be chaired by an Independent Expert Director with senior editorial and/or journalistic experience;
    - (B) be entitled to appoint as many members as it considers appropriate to discharge its functions, including by ensuring an appropriate balance of skills and expertise;
    - (C) actively monitor 21CF's compliance with all aspects of these undertakings and report any potential breaches to 21CF's Board. If the NewCo Editorial Committee is dissatisfied with the 21CF Board's response, it shall report the matter to [the Secretary of State/Ofcom/CMA]. 21CF shall co-operate fully with the NewCo Editorial Committee in the discharge of its functions under this section [11];
    - (D) operate under terms of reference which will stipulate that the NewCo Editorial Committee will:
      - I. be adequately resourced and have powers to review and investigate all areas within the remit of the NewCo Editorial Committee;
      - II. be entitled to appoint external advisers to assist in the discharge of its functions;
      - III. meet as frequently as it considers necessary to discharge its functions, but in any event not fewer than four times a year;
      - IV. consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines and report any such representations to the 21CF Board; and

- V. advise the NewCo Board on any issues within its remit;
- (E) have exclusive authority over the following matters:
- I. the selection and appointment of the Head of Sky News (including all aspects of the search and selection process);
  - II. the removal of the Head of Sky News;
  - III. the remuneration package of the Head of Sky News;
  - IV. any material changes to the authority or reporting relationship of the Head of Sky News; and
  - V. any future changes to the Sky News Editorial Guidelines;
- (the **NewCo Editorial Committee Authority**).
- (F) keep a written record of any matters escalated to it by the Head of Sky News as provided for in section [13.2(iii)] below, and provide a copy of any such record to the NewCo Board, the 21CF Board and [the Secretary of State/Ofcom/CMA] certified as accurate by one Independent Expert Director; and
- (G) on an annual basis, subject to no written records having been made under section [(F)] above in the preceding 12 months, prepare a statement confirming that no matters have been escalated to it by the Head of Sky News as provided for in section [13.2(iii)] below, and provide a copy of any such statement to the NewCo Board, the 21CF Board and [the Secretary of State/Ofcom/CMA] certified as accurate by one Independent Expert Director.

11.2 21CF shall ensure that the articles of association of NewCo provide that NewCo may not make any subsequent amendments to the NewCo Editorial Committee Authority without the prior approval of [the Secretary of State/Ofcom/CMA].

11.3 21CF shall ensure that:

- (i) a summary of any report provided under section [11.1(v)(F)] above;
- (ii) a copy of any statement provided under section [11.1(v)(G)] above; and
- (iii) a copy of any statement provided under section [11.1(ii)(D)] above

shall be included in its annual report.

11.4 21CF shall not cause, or attempt to cause, NewCo to act in breach of its articles of association.

## **12. NON-INTERFERENCE WITH NEWCO'S EDITORIAL INDEPENDENCE**

12.1 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or member of the 21CF Board, will influence or attempt to influence the editorial choices made by the Head of Sky News or the Head of Sky News' delegates (including, but not limited to, the selection, prominence or running of news stories or the political comment and opinion to be broadcast on the Sky News services that will be transferred to NewCo, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, or in any other way seek to bring about changes to the editorial output of Sky News).

- 12.2 Prior to the Closing Date, 21CF shall procure that Rupert Murdoch, Lachlan Murdoch and James Murdoch provide personal undertakings to the Secretary of State not to influence or attempt to influence, or seek to cause any other person to influence, the editorial choices made by the Head of Sky News or the Head of Sky News' delegates (including, but not limited to, the selection, prominence or running of news stories or the political comment and opinion to be broadcast on the Sky News services that will be transferred to NewCo, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, or in any other way seek to bring about changes to the editorial output of Sky News) in the form set out in **Annex 2**.
- 13. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES AND OTHER POLICIES**
- 13.1 21CF shall ensure that the articles of association of NewCo shall provide that NewCo shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section [13.2] below and as attached at **Annex 3** to these undertakings (the **Sky News Editorial Guidelines**).
- 13.2 21CF shall ensure that the Sky News Editorial Guidelines specify that:
- (i) the Head of Sky News retains complete operational (including setting commercial strategy and operating within the NewCo Financial Envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority;
  - (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under section [13.2(i)], the Head of Sky News will escalate such matters to the NewCo Editorial Committee; and
  - (iv) in the event that any other member of Sky News' staff becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under section [13.2(i)], he or she shall report such matters to the Head of Sky News.
- 13.3 21CF shall ensure that the articles of association of NewCo shall provide that NewCo may not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom/CMA].
- 13.4 With effect from the Closing Date, 21CF will ensure that the internal disciplinary policies of 21CF and Sky require that:
- (i) any attempt by an employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under section [13.2(i)] will be treated as a serious disciplinary matter that may render the individual liable to summary dismissal; and

- (ii) any reprisal by an employee, officer or director of 21CF or Sky against a member of Sky News staff for making a good faith report under section [13.2(iii) or 13.2(iv)] above is prohibited and will be treated as a serious disciplinary matter that may render the individual liable to summary dismissal.

13.5 With effect from the Closing Date, 21CF will ensure that the NewCo Editorial Committee is informed of the outcome of any disciplinary investigation in respect of the conduct described in section [13.4].

13.6 The NewCo Editorial Committee shall ensure that Sky News staff:

- (i) receive regular reminders of the policies set out in sections [13.2] and [13.4]; and
- (ii) are asked to certify on an annual basis that they are aware of the policies set out in sections [13.2] and [13.4] and have complied with those policies as applicable.

#### **14. COMMITMENT TO MAINTAIN FINANCIAL ENVELOPE**

14.1 21CF shall maintain: (i) the Operational Net Investment in NewCo at a level not materially different (taking into account cost and revenue inflation) from the aggregate of Sky's Operational Net Investment in Sky News; plus (ii) the incremental costs expected to be incurred in operating the Sky News business as a separate corporate entity, in each case as set out in the Schedule attached under **Annex 4 (the NewCo Financial Envelope)**, for 10 years from the Sky News Business Transfer (the **Initial Investment Period**). In the five-year period thereafter, 21CF shall maintain the NewCo Financial Envelope at a level not materially different to the preceding period (taking into account cost and revenue inflation, and market conditions).

14.2 The NewCo Board shall recommend to the 21CF Board for approval the level of NewCo Financial Envelope to be made by 21CF in the five-year period after the Initial Investment Period, taking into account cost and revenue inflation, and market conditions.

14.3 If 21CF does not intend to accept the NewCo Board's recommendation, 21CF shall inform the NewCo Board promptly, explaining its reasons. If, following receipt by the NewCo Board of the 21CF explanation contemplated in this section [14.3], the NewCo Board does not intend to amend its recommendation, the NewCo Board shall refer the matter to arbitration for final determination, in accordance with the provisions of **Annex 5**.

14.4 The Head of Sky News shall have full authority to manage NewCo within the scope of the NewCo Financial Envelope.

14.5 21CF shall procure that NewCo will maintain financial records showing the annual NewCo Financial Envelope by 21CF (the **NewCo Investment Report**). The NewCo Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State/Ofcom/CMA].

#### **15. SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO**

15.1 21CF shall cause the Sky News business to be transferred, as a going concern, to NewCo (**the Sky News Business Transfer**). This will require the transferring or making available of those assets required to conduct the Sky News business, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

- (i) all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News' business (including, for example, broadcasting and newsgathering facilities and equipment). Arrangements will also be made for NewCo to have the use of assets required or currently used to conduct the Sky News business

but which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo;

- (ii) all or substantially all intangible assets currently used exclusively for the purposes of carrying on Sky News' business (including, for example, Sky News produced content, including video and audio and archive footage and related consumer-facing software and applications, including the Sky News website and social media accounts). Arrangements will also be made for NewCo to have the use of other intangible assets required or currently used to conduct the Sky News business but which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo;
- (iii) all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff (UK and international staff), production, online and multimedia staff;
- (iv) all relevant customer, credit and other records; and
- (v) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of the Sky News business, including broadcast licences (and, to the extent that such licences, permits, consents or authorisations are not capable of transfer, 21CF will endeavour to assist NewCo in applying for new licences, permits, consents or authorisations).

15.2 21CF shall (subject to customary limitations) not solicit staff transferred to NewCo for a period beginning on the Closing Date and ending 24 months after the date of the incorporation of NewCo as a private limited company.

15.3 Without prejudice to the generality of section [15.1] above, and subject to obtaining the necessary third party consents, 21CF shall also use all reasonable endeavours to procure that there will be transferred to NewCo or that NewCo will otherwise have the benefit of:

- (i) general commercial contracts for the sale and distribution of Sky News content to third parties, including (i) video content on third party TV, online and mobile services and (ii) audio content on third party radio services;
- (ii) content supply contracts for the provision of news content by third parties to Sky News, including contracts for the provision of still images, text, graphics and video;
- (iii) UK/Ireland distribution agreements, being the carriage agreements between Sky and third parties for the supply of the Sky News channel on third party platforms; and
- (iv) international distribution agreements, being the carriage agreements between Sky and non-UK/Ireland third parties for the supply of the international feed of the Sky News channel for distribution on international third party platforms.

15.4 21CF shall ensure that Sky will enter into a [royalty-bearing] **Brand Licensing Agreement** with NewCo, under which NewCo will receive a licence of the Sky News brand for as long as Sky continues to hold 100% of the shares in NewCo, in a form to be approved by the Secretary of State prior to the Effective Date.

15.5 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in section [15.4] above shall:

- (i) permit NewCo to use the Sky News brand in connection with its news output;



- (ii) not provide Sky or 21CF with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of NewCo; and
- (iii) subject to section [16.5] below be terminable by Sky only in the event of a material breach that has not been cured, in the event that NewCo ceases to provide output which is branded “Sky News” and/or in the event that NewCo ceases to broadcast Sky News in the UK and/or in the event of a change in Control of NewCo.

## 16. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

16.1 21CF shall ensure that Sky will, on or before the Sky News Business Transfer, enter into the agreements listed below with NewCo under which Sky will provide facilities and support services to NewCo, on arm’s-length terms (and which will be included in the incremental costs expected to be incurred in operating the Sky News business as a separate corporate entity, as set out in the NewCo Financial Envelope attached as **Annex 4**):

- (i) an advertising sales agreement between NewCo and Sky under which Sky will sell advertising and sponsorship on behalf of NewCo for a term of up to [5] years;
- (ii) a lease of land and buildings under which Sky will agree to lease the Sky News land and buildings (or relevant parts thereof) to NewCo for a period of up to [15] years. In the event that existing contractual restrictions preclude the granting of such a lease, Sky will ensure equivalent access for Sky News to the relevant land and buildings for the same period;
- (iii) a site support services agreement under which Sky will agree to provide certain support services to NewCo while NewCo leases premises from Sky including IT support services for a term comparable with the term of the lease;
- (iv) one or more agreements in relation to broadcast and technical services under which Sky will offer to NewCo:
  - (A) an **EPG Services Agreement** (subject to EPG regulation including Ofcom’s Code of Practice on EPGs, and Sky’s published “Method for allocating listings in Sky’s EPG”);
  - (B) satellite capacity;
  - (C) playout;
  - (D) uplink;
  - (E) DTT transmission;
  - (F) online transmission; and
  - (G) mobile distribution,

in each case for a term of up to [10] years (or such shorter time as required by NewCo); and

- (v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

- 16.2 Each of the agreements set out at [16.1(i) to 16.1(v)] above will be terminable by NewCo on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.
- 16.3 21CF shall ensure that the agreements listed in sections [16.1(iii), 16.1(iv) and 16.1(v)] above will provide that charges to NewCo are set for the first year at a price (for each relevant agreement) equivalent to the cost of Sky providing the relevant services (including internal cost allocations). Thereafter the charge to NewCo for each agreement will be based upon the price increased by CPI for each following year for the remainder of the agreement, with the following adjustments:
- (i) Sky will adjust pricing to reflect actual usage levels for services where NewCo has variable demand (e.g. IT support services and broadcast operations and creative services); and
  - (ii) Sky will adjust pricing to pass on savings or cost increases of services which Sky obtains from a third party (for example, the cost of web hosting or mobile transmission); and
  - (iii) the percentage increase in the total amount charged to NewCo on a like-for-like basis (i.e. assuming the same levels on consumption for those costs which are variable in nature based on usage levels) will be subject to an aggregate cap on the increase in the total amount charged to NewCo of [6%] plus [50%] of the incremental increase in CPI between [6%] and [10%], and to the extent that this is exceeded the CPI adjustment applied to the charge for each agreement will be reduced.
- 16.4 21CF shall grant NewCo reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that NewCo reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from NewCo, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.
- 16.5 21CF shall ensure that any agreements entered into under sections [15.4 and 16.1(i) to 16.1(v)] above will contain a dispute resolution mechanism. In the case of the Brand Licensing Agreement described in section [15.4] above, the lease agreement described in section [16.1(ii)] above and the agreement(s) in relation to services described at section [16.1(iv)(A), 16.1(iv)(B), 16.1(iv)(C) and 16.1(iv)(D)] above, 21CF will ensure that the relevant agreements cannot be terminated by Sky until any dispute between NewCo and Sky as to the validity of that proposed termination has been finally resolved under the dispute resolution process specified in the relevant agreement. 21CF will bear all reasonable costs (including NewCo's reasonable costs) of any dispute resolution process originating from a proposed termination by Sky of the relevant agreement (irrespective of the outcome of that dispute resolution process).
- 16.6 In the event any additional services have historically been provided to the Sky News business by Sky, 21CF will ensure that Sky will, on or before the Sky News Business Transfer, enter into any additional services agreement as are necessary in order for NewCo to continue to operate the Sky News business and associated costs shall increase the NewCo 21CF Financial Envelope.

## **17. APPOINTMENT OF MONITORING TRUSTEE**

- 17.1 Within 20 Working Days of the Effective Date, 21CF shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by 21CF. The Monitoring Trustee so approved shall be appointed by 21CF within 7 Working Days.

- 17.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 17.3 The Monitoring Trustee shall be independent of 21CF, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 17.4 If the person nominated by 21CF pursuant to section [17.1] above is not approved by the Secretary of State, 21CF shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in [17.1] above.
- 17.5 In the event that:
- (i) 21CF fails to nominate any person or persons in accordance with the provisions of section [17.1 above] or [17.4 above]; or
  - (ii) none of the persons nominated by 21CF pursuant to section [17.1 above] or [17.4 above] is approved by the Secretary of State; or
  - (iii) 21CF is unable for any reason to conclude within the time limit stipulated in section [17.1 above] the appointment of any such person following approval by the Secretary of State,

21CF shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. 21CF shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

- 17.6 21CF shall secure that a Monitoring Trustee is appointed in accordance with sections [17.1 to 17.5] above prior to the Closing Date.
- 17.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), 21CF shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections [17.1 to 17.4] above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, 21CF shall appoint a Monitoring Trustee in accordance with section [17.5] above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.
- 17.8 The Monitoring Trustee shall remain in place until all of the operational agreements detailed in section [16.1] above become effective.
- 17.9 21CF shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.

## **18. FUNCTIONS OF MONITORING TRUSTEE**

- 18.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.

- 18.2 The Monitoring Trustee shall monitor 21CF's compliance with all and any part of these undertakings prior to the operational agreements detailed in section [16.1] above becoming effective and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section [16.1] above which require his prior approval.
- 18.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.
- 18.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the CMA if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section [21.2] below). If the Monitoring Trustee sends a report to the Secretary of State or to the CMA under this section [18.4], the Monitoring Trustee shall, at the same time, inform 21CF of such a report being sent.
- 18.5 The Monitoring Trustee shall ensure that:
- (i) no arrangements are put in place or completed that affect the ability of 21CF to comply with its obligations under these undertakings; and
  - (ii) 21CF takes no action or makes no omission that might adversely affect 21CF's compliance with its obligations under these undertakings.
- 18.6 The Monitoring Trustee shall:
- (i) facilitate the provision of information by 21CF to the Secretary of State in accordance with section [20] of these undertakings; and
  - (ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section [21.2] below).
- 18.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of 21CF, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.
- 18.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section [18.2] above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert in this area and independent of 21CF and NewCo. 21CF will bear all reasonable costs incurred by the Monitoring Trustee under this section [18.8].

## **19. REMUNERATION OF MONITORING TRUSTEE**

- 19.1 21CF shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

## **20. OBLIGATIONS OF 21CF FOLLOWING APPOINTMENT OF MONITORING TRUSTEE**

- 20.1 21CF shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.
- 20.2 21CF shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:
- (i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section [18.7 above]; and
  - (ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of 21CF, Sky and NewCo as the Monitoring Trustee may reasonably require access to.
- 20.3 If 21CF has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and [the Secretary of State] immediately.

## **21. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE**

- 21.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and [the CMA/Ofcom] a statement certifying whether or not, in his view, 21CF has complied with these undertakings in the preceding four weeks.
- 21.2 When providing its reports to the Secretary of State and [the CMA/Ofcom] the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or [the CMA/Ofcom] which 21CF would be entitled to withhold from the Secretary of State or [the CMA/Ofcom] (as applicable) on the grounds of legal privilege.
- 21.3 All communications between the Monitoring Trustee and the Secretary of State and [the CMA/Ofcom] shall be confidential and should not be disclosed to 21CF, save with the express written permission of the Secretary of State and/or [the CMA/Ofcom]. For the avoidance of doubt, nothing in this section [21.3] shall restrict the Monitoring Trustee from informing 21CF of any report sent to the Secretary of State or to [the CMA/Ofcom] under section [18.4] above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Act. The Monitoring Trustee shall not disclose such communications to third parties.

## **22. VARIATION AND TERMINATION**

- 22.1 These undertakings shall remain in force until such time as they are varied, released or superseded under the Order.
- 22.2 In the event of a material change of circumstances, the Secretary of State may, in response to a request from 21CF, vary or release one or more of these undertakings. Upon receipt of such a request, the Secretary of State shall consult the CMA on whether the change of circumstances identified in the request results in the adverse effects identified in the Secretary of State's Decision ceasing to apply.
- 22.3 The variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **23. COMPLIANCE**

23.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:

- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
- (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

23.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.

23.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section [23.3].

## **24. INTERIM ACTION**

24.1 From the Closing Date until the Sky News Business Transfer, 21CF shall ensure that (except with the prior written consent of the Secretary of State or for the purposes of preparing for the transfer of the Sky News business to NewCo and/or effecting the incorporation of NewCo as a private limited company):

- (i) without 21CF accepting any duty to provide any substantial capital expenditure to the Sky News business in addition to the capital expenditure plans in place at the time of the Transaction, the Sky News business (as at the Closing Date) is maintained as a going concern and sufficient resources are made available by 21CF for the continuation of the Sky News business on the basis of its pre-merger business plan;
- (ii) no material changes are made to the organisational structure of the Sky News business or the management responsibilities within the Sky News business, other than in the ordinary course of business;
- (iii) the Sky News business, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;
- (iv) 21CF shall not attempt to influence the editorial decisions of the Sky News business prior to incorporation of NewCo as a private limited company;
- (v) the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;
- (vi) the separate brand identity of the Sky News business is maintained;
- (vii) no assets of the Sky News business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (viii) there is no new integration of the information technology used by Sky with that used by the Sky News business and the software and hardware platforms of the Sky News

business shall remain unchanged, except for changes and maintenance in the ordinary course of business; and

- (ix) all reasonable steps are taken to encourage all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business (as set out in section [15.1] above) to remain with the Sky News business.

24.2 21CF shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by 21CF with these undertakings.

## 25. PROVISION OF INFORMATION

25.1 21CF shall furnish promptly to [the Secretary of State/CMA/Ofcom] such information as [the Secretary of State/CMA/Ofcom] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## 26. INTERPRETATION

26.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

26.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

26.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

26.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**Brand Licensing Agreement**” has the meaning set out in section [15.4 above];

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means:

- (a) if the Transaction is effected by way of a takeover offer (as that term is defined in section 974 of the Companies Act), the date on which such takeover offer becomes or is declared unconditional in all respects; or
- (b) if the Transaction is effected by way of a scheme of arrangement, the date on which the scheme of arrangement becomes effective in accordance with its terms;

“**CMA**” means the Competition and Markets Authority;

“**Control**” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 40 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 40 per cent or more of the total number of votes which may be cast at such meetings;

“**CPI**” means the consumer prices index, as published from time to time by the Office for National Statistics;

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at [9.1] above;

“**EPG**” means Electronic Programme Guide;

“**EPG Services Agreement**” has the meaning set out in section [16.1(iv)(A)] above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Head of Sky News**” means the individual responsible for setting commercial strategy and operating within the NewCo Financial Envelope, and setting editorial strategy and direction for Sky News’ digital, television and radio output, including holding the ultimate responsibility for the appointment and dismissal of Sky News employees (including presenters);

“**Independent Director**” means a member of the NewCo board of directors who:

- has not been an employee of 21CF, News Corp, any member of the Murdoch Family, or any member of the same Group of Interconnected Bodies Corporate as 21CF (excluding NewCo) or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the NewCo board, a material business relationship with NewCo, 21CF, News Corp or any member of the Murdoch Family, either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky’s independent directors shall not be excluded from this definition by virtue of having served on Sky’s board);
- has not received and does not receive additional remuneration from NewCo, 21CF, News Corp or any member of the Murdoch Family, apart from a director’s fee, does not participate in NewCo’s, 21CF’s or News Corp’s share option or performance-related pay scheme, and is not a member of NewCo’s, 21CF’s or News Corp’s pension scheme;
- does not have close family ties with any of NewCo’s, 21CF’s or News Corp’s advisers, directors or senior employees or with any member of the Murdoch Family;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies or with any member of the Murdoch Family;
- does not represent a significant NewCo, 21CF or News Corp shareholder or any member of the Murdoch Family; and



- has not served on the board of NewCo, 21CF, News Corp, any company controlled by any member of the Murdoch Family or any company on whose board any member of the Murdoch Family has served within nine years from the date of their first appointment;

**“Independent Expert Director”** means an Independent Director that has experience in the UK media sector or experience of monitoring the implementation of merger remedies;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Key Sky News Editorial Staff”** means the Head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News;

**“Material Transaction”** means any transaction that involves or could reasonably involve the payment or receipt by NewCo or its subsidiaries of amounts of £5 million or more or such other limits agreed by NewCo from time to time. For the avoidance of doubt any renewal of or material amendment to the Brand Licensing Agreement, the lease agreement described in section [16.1(ii)] above or the agreement(s) in relation to services described at section [16.1(iv)(A), 16.1(iv)(B) and 16.1(iv)(C)] above would be deemed to be a material transaction for the purposes of this definition;

**“MFT”** means the Murdoch Family Trust;

**“Monitoring Trustee”** means the person appointed pursuant to section [17] above to carry out the Monitoring Trustee Functions;

**“Monitoring Trustee Functions”** means the functions set out in section [18] above;

**“Murdoch Family”** means Rupert Murdoch, Lachlan Murdoch and James Murdoch;

**“NewCo”** means the private limited company (including, where relevant, any wholly-owned subsidiary of such private limited company) into which the business of Sky News will be transferred and which will continue to operate that business, as described in section [10.1] above;

**“NewCo Board”** means the board of directors of NewCo;

**“NewCo Editorial Committee”** has the meaning set out in section [11.1(v)] above;

**“NewCo Editorial Committee Authority”** has the meaning set out in section [11.1(v)(E)] above;

**“NewCo Financial Envelope”** has the meaning set out in section [14.1] above;

**“NewCo Investment Report”** has the meaning set out in section [14.4] above;

**“News Corp”** means News Corporation;

**“Ofcom”** means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

**“Operational Net Investment”** the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

**“Order”** means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

“**Secretary of State**” means Secretary of State for Digital, Culture, Media and Sport;

“**Sky**” means Sky plc;

“**Sky News**” means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business which will remain under the sole control of Sky;

“**Sky News Business Transfer**” has the meaning set out in section [14.1] above;

“**Sky News Editorial Guidelines**” has the meaning given to it in section [13.1] above;

“**Sky UK**” means Sky UK Limited or any successor company that holds the licence for the Sky News service;

“**Subsidiary**” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“**Transaction**” means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own; and

“**Working Day**” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

**ANNEX 1**

**ARTICLES OF ASSOCIATION OF NEWCO**

**THE COMPANIES ACT 2006**

**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of  
[SKY NEWS] LIMITED**

**(Adopted by Special Resolution passed on [●])**

**No. [●]**

## INDEX TO THE ARTICLES

Article	Page
PRELIMINARY	
1. Model articles do not apply .....	3
INTERPRETATION	
2. Defined terms .....	3
OBJECTS	
3. Object .....	7
LIMITED LIABILITY	
4. Liability of members .....	7
DIRECTORS	
DIRECTORS' GENERAL POWERS, DUTIES AND RESPONSIBILITIES	
5. Directors' general powers .....	7
6. Directors' duties .....	7
7. Directors may delegate .....	7
8. Committees .....	8
DECISION-MAKING BY DIRECTORS	
9. Directors to take decisions collectively .....	8
10. Unanimous decisions .....	8
11. Calling a directors' meeting .....	8
12. Participation in directors' meetings .....	9
13. Quorum for directors' meetings .....	9
14. Chairing of directors' meetings .....	9
DIRECTORS' INTERESTS	
15. Directors' interests in relation to transactions or arrangements with the company .....	10
16. Directors' interests other than in relation to transactions or arrangements with the company .....	10
17. Directors' interests generally and voting .....	11
18. Records of decisions to be kept .....	12
19. Directors' discretion to make further rules .....	12
APPOINTMENT OF DIRECTORS	
20. Number of directors; composition of board of directors and committees .....	13
21. Initial directors; methods of appointing and removing directors .....	13
22. Termination of director's appointment .....	13
23. Retirement of directors .....	14
24. Term limit .....	14
25. Directors' services and remuneration .....	14
26. Directors' expenses .....	14
27. Directors' pensions and other benefits .....	14
EDITORIAL COMMITTEE AND OTHER EDITORIAL MATTERS	
28. Establishment and composition of the Editorial Committee .....	15
29. Duties and responsibilities of the Editorial Committee .....	15
30. Amendments to the Editorial Committee Authority .....	16
31. Reminder and certification of policies .....	16
SKY NEWS AND SKY NEWS EDITORIAL GUIDELINES	
32. Sky News .....	16
33. Sky News Editorial Guidelines .....	17
AUDIT COMMITTEE AND TRANSACTIONS REQUIRING APPROVAL	
34. Audit Committee establishment and terms of reference .....	17
35. Transactions requiring the approval of the Audit Committee .....	17

36.	Transactions requiring the approval of the Audit Committee and the directors.....	18
FINANCIAL ENVELOPE		
37.	Financial Envelope.....	18
SHARES AND DISTRIBUTIONS – SHARES		
38.	All shares to be fully paid up.....	18
39.	Powers to allot shares.....	18
40.	Company not bound by less than absolute interests.....	19
41.	Share certificates.....	19
42.	Replacement share certificates.....	19
43.	Share transfers.....	20
44.	Transmission of shares.....	20
45.	Exercise of transmitters' rights.....	20
46.	Transmitters bound by prior notices.....	21
DIVIDENDS AND OTHER DISTRIBUTIONS		
47.	Procedure for declaring dividends.....	21
48.	Payment of dividends and other distributions.....	21
49.	No interest on distributions.....	22
50.	Unclaimed distributions.....	22
51.	Non-cash distributions.....	22
52.	Waiver of distributions.....	23
SHARE BUYBACKS		
53.	Buybacks out of capital.....	23
CAPITALISATION OF PROFITS		
54.	Authority to capitalise and appropriation of capitalised sums.....	23
DECISION-MAKING BY SHAREHOLDERS – ORGANISATION OF GENERAL MEETINGS		
55.	Notice of general meeting.....	24
56.	Attendance and speaking at general meetings.....	24
57.	Quorum for general meetings.....	24
58.	Chairing general meetings.....	24
59.	Attendance and speaking by directors and non-shareholders.....	25
60.	Adjournment.....	25
VOTING AT GENERAL MEETINGS		
61.	Voting: general.....	26
62.	Errors and disputes.....	26
63.	Poll votes.....	26
64.	Content of proxy notices.....	26
65.	Delivery of proxy notices etc. ....	27
66.	Amendments to resolutions.....	27
ADMINISTRATIVE ARRANGEMENTS		
67.	Means of communication to be used.....	28
68.	When a communication from the company is deemed received.....	28
69.	Notices in writing given to the company by majority shareholders.....	28
70.	Company seals.....	29
71.	No right to inspect accounts and other records.....	29
72.	Provision for employees on cessation of business.....	29
WINDING UP		
73.	Winding up.....	29
DIRECTORS' INDEMNITY AND INSURANCE		
74.	Indemnity.....	30
75.	Insurance.....	30

Company number  
[●]

THE COMPANIES ACT 2006  
A PRIVATE COMPANY LIMITED BY SHARES  
**ARTICLES OF ASSOCIATION**  
**OF**  
**[SKY NEWS] LIMITED**

*[(adopted by special resolution  
passed on [●])]*

**PRELIMINARY**

**1. Model articles do not apply**

None of the articles in the model articles for a private company limited by shares set out in Schedule 1 to The Companies (Model Articles) Regulations 2008 shall apply to the company.

**INTERPRETATION**

**2. Defined terms**

(a) In the articles, unless the context requires otherwise:

**21CF** means 21st Century Fox, Inc;

**21CF Board** means the board of directors of 21CF;

**articles** means the company's articles of association, as from time to time amended;

**Audit Committee** means the audit committee of the Company referred to in article 34;

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**chairman** has the meaning given in article 14;

**chairman of the meeting** has the meaning given in article 58;

**CMA** means the Competition and Markets Authority;

**Companies Act** means the Companies Act 2006 including any statutory modification or re-enactment of it for the time being in force;

**company** means [Sky News Limited] (registered number [●]);

**director** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**distribution recipient** has the meaning given in article 48;

**document** includes, unless otherwise specified, any document sent or supplied in electronic form;

**Editorial Committee** means the editorial committee referred to in articles 28 to 29(a);

**Editorial Committee Authority** has the meaning given in article 29;

**electronic form** has the meaning given in section 1168 of the Companies Act;

**eligible director** means a director who is entitled to vote on the relevant matter at a directors' meeting but excluding any director whose vote is not to be counted in respect of the relevant matter;

**fully paid** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**Group of Interconnected Bodies Corporate** has the meaning given in section 129(2) of the Enterprise Act 2002; and references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**hard copy form** has the meaning given in section 1168 of the Companies Act;

**Head of Sky News** means the individual responsible for setting commercial strategy and operating within the Newco Financial Envelope, and setting editorial strategy and direction for Sky News' digital, television and radio output, including holding the ultimate responsibility for the appointment and dismissal of Sky News employees (including presenters);

**holder** in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**Independent Director** means a member of the company's board of directors who:

- (a) has not been an employee of 21CF, News Corp, any member of the Murdoch Family, or any member of the same Group of Interconnected Bodies Corporate as 21CF (excluding the company) or News Corp within the last five years;
- (b) does not have, and has not had within the last three years of the date of their first appointment to the company's board of directors, a material business relationship with the company, 21CF, News Corp or any member of the Murdoch Family, either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board); for these purposes, staff employed within Sky News shall not be deemed to have any such material business relationship unless they are members of the Murdoch Family or were employed by 21CF (other than within the Sky News business) or News Corp within the last three years;
- (c) has not received and does not receive additional remuneration from the company, 21CF, News Corp or any member of the Murdoch Family, apart from a director's fee, does not participate in the company's, 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of the company's, 21CF's or News Corp's pension scheme;

- (d) does not have close family ties with any of the company's, 21CF's or News Corp's advisers, directors or senior employees or with any member of the Murdoch Family;
- (e) does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies or with any member of the Murdoch Family;
- (f) does not represent a significant shareholder of the company, 21CF or News Corp or any member of the Murdoch Family; and
- (g) has not served on the board of the company, 21CF, News Corp, any company controlled by any member of the Murdoch Family or any company on whose board any member of the Murdoch Family has served within nine years from the date of their first appointment;

**Independent Expert Director** means an Independent Director that has experience in the UK media sector or experience of monitoring the implementation of merger remedies;

**instrument** means a document in hard copy form;

**Murdoch Family** means Rupert Murdoch, Lachlan Murdoch and James Murdoch;

**Newco Financial Envelope** has the meaning given in the Undertakings;

**News Corp** means News Corporation;

**Ofcom** means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

**Ofcom Broadcasting Code** means the broadcasting code published by Ofcom (as amended from time to time);

**Operational Agreements** means each of:

- (a) the brand licence agreement between [Sky] and the company dated [●];
- (b) the lease agreement between [Sky] and the company dated [●];
- (c) the electronic programme guide services agreement between [Sky] and the company dated [●];
- (d) the [satellite capacity agreement] between [Sky] and the company dated [●];
- (e) the [playout agreement] between [Sky] and the company dated [●],

in each case, as amended from time to time;

**ordinary resolution** has the meaning given in section 282 of the Companies Act;

**paid** means paid or credited as paid;

**participate**, in relation to a directors' meeting, has the meaning given in article 12;

**proxy notice** has the meaning given in article 64;

**relevant situation** has the meaning given in article 16;



**Secretary of State** means Secretary of State for Digital, Culture, Media and Sport;

**shareholder** means a person who is the holder of a share;

**shares** means shares in the company;

**Sky** means Sky [Limited (formerly Sky plc)], a company incorporated under the laws of England and Wales with registered number 02247735];

**Sky Independent Director** means an independent director of Sky as at the date of adoption of these articles;

**Sky News** means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK Limited and received primarily in the United Kingdom and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises;

**special resolution** has the meaning given in section 283 of the Companies Act;

**subsidiary** has the meaning given in section 1159 of the Companies Act;

**transmittee** means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

**Undertakings** means the undertakings dated [●] given by 21CF pursuant to paragraph 3 of schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003; and

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- (b) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act as in force on the date when these articles become binding on the company.
- (c) Unless the contrary intention appears, words importing the singular number include the plural number and vice versa, words importing one gender include all genders and words importing persons include bodies corporate and unincorporated associations.
- (d) Headings to the articles are inserted for convenience only and shall not affect construction.
- (e) The Interpretation Act 1978 shall apply to these articles as it does to Acts of Parliament.
- (f) References in these articles to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- (g) In these articles the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

## OBJECTS

### **3. Object**

The object of the company is to maintain a Sky-branded news service received primarily in the UK which will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code.

## **LIMITED LIABILITY**

### **4. Liability of members**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## **DIRECTORS**

### **DIRECTORS' GENERAL POWERS, DUTIES AND RESPONSIBILITIES**

### **5. Directors' general powers**

Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

### **6. Directors' duties**

- (a) The directors shall act in accordance with the articles and exercise their powers in order to further, the company's object set out in article 3.
- (b) In the exercise of his duties, a director shall not be restricted by any duty of confidentiality to the company from providing information regarding the company to a holding company of the company but a director who is also a director of any holding company of the company shall owe a strict duty of confidentiality to that holding company in relation to confidential information of the holding company.

### **7. Directors may delegate**

- (a) Subject to the articles (including article 20(b)), the directors may delegate any of the powers which are conferred on them under the articles:
  - (i) to such person or committee;
  - (ii) by such means (including by power of attorney);
  - (iii) to such an extent;
  - (iv) in relation to such matters or territories; and
  - (v) on such terms and conditions,as they think fit.
- (b) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (c) Subject to the articles, the directors may revoke any delegation in whole or part, or alter its terms and conditions, save that the delegation to the Audit Committee set out in articles 35 and 36 and/or the delegation to the Editorial Committee set out in article 29 may not be revoked.

## **8. Committees**

- (a) Subject to article 8(b), committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- (b) Subject to the articles, the directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them, save that the directors may not make rules which relate to the Audit Committee and/or the Editorial Committee under this article 8(b) which are inconsistent with any of the other provisions of these articles.

## **DECISION-MAKING BY DIRECTORS**

### **9. Directors to take decisions collectively**

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 10.

### **10. Unanimous decisions**

- (a) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
- (b) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (c) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

### **11. Calling a directors' meeting**

- (a) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- (b) Notice of any directors' meeting must indicate:
  - (i) its proposed date and time;
  - (ii) where it is to take place; and
  - (iii) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (c) Notice of a directors' meeting must be given to each director, but need not be in writing.
- (d) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

## **12. Participation in directors' meetings**

- (a) Subject to the articles, directors **participate** in a directors' meeting, or part of a directors' meeting, when:
  - (i) the meeting has been called and takes place in accordance with the articles; and
  - (ii) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (b) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- (c) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is. In the absence of such a decision, the meeting is deemed to take place at the location from where the chairman participates.

## **13. Quorum for directors' meetings**

- (a) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (b) Subject to paragraphs (c) and (d), the quorum for directors' meetings is two eligible directors.
- (c) For the purpose of any directors' meeting (or part of a meeting) held in accordance with article 16 to authorise a director's conflict of interest, if only one eligible director is in office, the quorum is one eligible director.
- (d) For the purpose of any directors' meeting (or part of a meeting) at which the business of the meeting involves the consideration of editorial or journalistic matters, the quorum must include a director with senior editorial and/or journalistic expertise.
- (e) If the total number of directors for the time being in office is less than the quorum required, the director or directors in office must not take any decision other than a decision to appoint further directors in accordance with these articles.

## **14. Chairing of directors' meetings**

- (a) The directors must appoint a director with senior editorial and/or journalistic experience to chair their meetings.
- (b) The person so appointed for the time being is known as the **chairman**.
- (c) The directors may terminate the chairman's appointment at any time.
- (d) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors may appoint one of themselves to chair it (provided that the proposed chairman is a director with senior editorial and/or journalistic experience), failing which they shall adjourn the directors' meeting and either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors.

## **DIRECTORS' INTERESTS**

**15. Directors' interests in relation to transactions or arrangements with the company**

The relevant provisions of the Companies Act (including without limitation sections 177 and 182 of the Companies Act) shall apply in relation to declarations of interests in proposed and existing transactions or arrangements with the company.

**16. Directors' interests other than in relation to transactions or arrangements with the company**

(a) If a situation (a **relevant situation**) arises in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (including, without limitation, in relation to the exploitation of any property, information or opportunity, whether or not the company could take advantage of it but excluding any situation which cannot reasonably be regarded as likely to give rise to a conflict of interest) the following provisions shall apply if the conflict of interest does not arise in relation to a transaction or arrangement with the company:

(i) if the relevant situation arises from the appointment or proposed appointment of a person as a director of the company:

(A) the directors (other than the director, and any other director with a similar interest, who shall not be counted in the quorum at the meeting and shall not vote on the resolution); or

(B) the shareholders (by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares),

may resolve to authorise the appointment of the director and the relevant situation on such terms as they may determine;

(ii) if the relevant situation arises in circumstances other than in paragraph (i):

(A) the directors (other than the director and any other director with a similar interest who shall not be counted in the quorum at the meeting and shall not vote on the resolution); or

(B) the shareholders (by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares),

may resolve to authorise the relevant situation and the continuing performance by the director of his duties on such terms as they may determine.

(b) Any reference in paragraph (a) to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

(c) Any terms determined by the directors or the shareholders under paragraphs (a)(i) or (a)(ii) may be imposed at the time of the authorisation or may be imposed or varied subsequently by either the directors or the shareholders and may include (without limitation):

(i) whether the interested directors may vote (and be counted in the quorum at any meeting) in relation to any decision relating to the relevant situation;

(ii) the exclusion of the interested directors from all information and discussion by the company of the relevant situation; and

- (iii) (without prejudice to the general obligations of confidentiality) the application to the interested directors of a strict duty of confidentiality to the company for any confidential information of the company in relation to the relevant situation.
- (d) Any authorisation given under paragraphs (a)(i) or (a)(ii) may be withdrawn by either the directors or the shareholders by giving notice to the director concerned.
- (e) An interested director must act in accordance with any terms determined by the directors or the shareholders under paragraphs (a)(i) or (a)(ii).
- (f) Except as specified in paragraph (a), any proposal made to the directors and any authorisation by the directors in relation to a relevant situation shall be dealt with in the same way as any other matter may be proposed to and decided by the directors in accordance with the articles.
- (g) Any authorisation of a relevant situation given by the directors or the shareholders under paragraph (a) may provide that, where the interested director obtains (other than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose it to the company or to use it in relation to the company's affairs in circumstances where to do so would amount to a breach of that confidence.
- (h)
  - (i) If the directors make an authorisation under paragraph (a), impose or vary the terms of an authorisation under paragraph (c), or withdraw an authorisation under paragraph (d), they shall, as soon as reasonably practicable, notify the shareholders of this fact and provide, where applicable, any relevant particulars regarding the authorisation or its terms.
  - (ii) If the shareholders make an authorisation under paragraph (a), impose or vary the terms of an authorisation under paragraph (c), or withdraw an authorisation under paragraph (d), they shall, as soon as reasonably practicable, notify the directors of this fact and provide, where applicable, any relevant particulars regarding the authorisation or its terms.
- (i)
  - (i) A director shall, as soon as reasonably practicable, declare the nature and extent of his interest in a relevant situation within paragraph (a)(i) or (a)(ii) to the other directors and the shareholders.  
  
Failure to comply with this requirement does not affect the underlying duty to make the declaration of interest.
  - (ii) If a declaration of interest in relation to a relevant situation proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

## **17. Directors' interests generally and voting**

- (a) Subject to the Companies Act and to articles 15, 16, 20 and 21, a director notwithstanding his office:
  - (i) may be a party to, or otherwise interested or participate in, any transaction or arrangement with the company or in which the company is otherwise interested, including any such pensions, other benefits, transactions or arrangements as are referred to in article 27;
  - (ii) may act by himself or his firm in a professional capacity for the company (except as auditor) and he or his firm shall be entitled to remuneration as if he were not a director;

- (iii) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and
  - (iv) shall not, by reason of his office (or of the fiduciary relationship established by holding that office), be accountable to the company for any remuneration, profit or other benefit resulting from any relevant situation authorised under article 16 or any interest permitted under paragraphs (a)(i), (a)(ii), or (a)(iii), and no contract, transaction or arrangement shall be liable to be avoided on the grounds of any director having an interest authorised under article 16 or permitted under paragraphs (a)(i), (a)(ii), or (a)(iii).
- (b) Subject to articles 15 and 16, a director shall be entitled to vote on any decision concerning any matter in which he has, directly or indirectly, an interest or a duty.
  - (c) In the case of an alternate director, an interest of his appointor shall be treated as an interest of the alternate in addition to any interest which the alternate otherwise has.
  - (d) Subject to the Companies Act, the company may, by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares, suspend or relax the provisions of this article to any extent or ratify any contract, transaction or arrangement not duly authorised by reason of a contravention of this article.
  - (e) Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the company or any body corporate in which the company is interested, the proposals may be divided and considered in relation to each director separately and (provided he is not otherwise precluded from voting) each of the directors concerned shall be entitled to vote (and to form part of the quorum) in respect of each proposal except that concerning his own appointment.
  - (f) Subject to paragraph (g), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting and quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
  - (g) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting and quorum purposes.

## **18. Records of decisions to be kept**

The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

## **19. Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## APPOINTMENT OF DIRECTORS

### 20. Number of directors; composition of board of directors and committees

- (a) The company's board of directors shall comprise solely directors who are Independent Directors and consist of [a minimum of] five [and a maximum of seven directors]. At least one director must have senior editorial and/or journalistic experience.
- (b) The company's board of directors and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the company and its business to enable the directors to discharge their respective duties and responsibilities effectively.

### 21. Initial directors; methods of appointing and removing directors

- (a) With effect from the date of adoption of these articles, the company's board of directors comprises:
  - (i) [three] Sky Independent Directors (the **Initial Sky Independent Directors**); and
  - (ii) [two] other directors nominated for appointment by the Initial Sky Independent Directors,  
  
(together, the **Initial Directors**) each of whom has been approved by [Secretary of State/Ofcom/CMA] as meeting the criteria of an Independent Director.
- (b) Subject to article 20 and the remainder of this article 21, any person who is willing to act as a director, who meets the criteria of an Independent Director and who is permitted by law and these articles to do so, may be appointed to be a director by a decision of the directors.
- (c) Subject to articles 20 and 21(d), upon a director (including an Initial Director) resigning, retiring or otherwise ceasing to be a director, the remaining directors in office at such date shall nominate and appoint one or more new directors, subject to and in accordance with these articles, if necessary to maintain at least the minimum number of directors stated in article 20(a).
- (d) Any newly appointed director must first be approved by the [Secretary of State/Ofcom/CMA] as meeting the criteria of an Independent Director. On each occasion where the directors seek [the Secretary of State's / Ofcom's / the CMA's] approval for the appointment of a new director, the directors shall prepare a statement setting out the basis on which they consider that the proposed appointee to meet the criteria of an Independent Director, and provide a copy of any such statement to the 21CF Board and [the Secretary of State / Ofcom / the CMA] certified as accurate by at least one director.

### 22. Termination of director's appointment

A person ceases to be a director as soon as:

- (a) that person ceases to be an Independent Director;
- (b) that person ceases to be a director by virtue of any provision of the Companies Act or is prohibited from being a director by law;
- (c) a bankruptcy order is made against that person;
- (d) a composition is made with that person's creditors generally in satisfaction of that person's debts;



- (e) a registered medical practitioner who has examined him gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

**23. Retirement of directors**

Each director must retire from office no later than the sixth anniversary of his or her appointment.

**24. Term limit**

A director who has retired from office or otherwise ceased to be a director may not be reappointed as a director.

**25. Directors' services and remuneration**

- (a) Directors may undertake any services for the company that the directors decide and the company may enter into a contract of service with any director on such terms as the directors think fit.
- (b) Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of contract of service between the director and the company.
- (c) Directors are entitled to such remuneration as the directors determine:
  - (i) for their services to the company as directors; and
  - (ii) for any other service which they undertake for the company.
- (d) Subject to the articles, a director's remuneration may take any form.
- (e) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

**26. Directors' expenses**

The company may pay any reasonable expenses which the directors, alternate directors and the company secretary (if any) properly incur in connection with their attendance at:

- (a) meetings of directors or committees of directors;
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**27. Directors' pensions and other benefits**

The directors may exercise all the powers of the company to:

- (a) pay, provide, arrange or procure the grant of pensions or other retirement benefits, death, disability or sickness benefits, health, accident and other insurances or other such benefits, allowances, gratuities or insurances, including in relation to the termination of employment, to or for the benefit of any person who is or has been at any time a director of the company or in the employment or service of the company or of any body corporate which is or was associated with the company or of the predecessors in business of the company or any such associated body corporate, or the relatives or dependants of any such person. For that purpose, the directors may procure the establishment and maintenance of, or participation in, or contribution to, any pension fund, scheme or arrangement and the payment of any insurance premiums;
- (b) establish, maintain, adopt and enable participation in any profit sharing or incentive scheme including shares, share options or cash or any similar schemes for the benefit of any director or employee of the company or of any associated body corporate, and to lend money to any such director or employee or to trustees on their behalf to enable any such schemes to be established, maintained or adopted; and
- (c) support and subscribe to any institution or association which may be for the benefit of the company or associated body corporate or any directors or employees of the company or associated body corporate or their relatives or dependants or connected with any town or place where the company or an associated body corporate carries on business, and to support and subscribe to any charitable or public object whatsoever.

#### **EDITORIAL COMMITTEE AND OTHER EDITORIAL MATTERS**

##### **28. Establishment and composition of the Editorial Committee**

The company shall establish and maintain an Editorial Committee which shall:

- (a) be chaired by an Independent Expert Director with senior editorial and/or journalistic experience; and
- (b) be entitled to appoint as many members as it considers appropriate to discharge its functions, including by ensuring an appropriate balance of skills and expertise.

##### **29. Duties and responsibilities of the Editorial Committee**

The Editorial Committee shall:

- (a) actively monitor 21CF's compliance with all aspects of these undertakings and report any potential breaches to the 21CF Board, and if the Editorial Committee is dissatisfied with the 21CF Board's response, it shall report the matter to [the Secretary of State/Ofcom/CMA];
- (b) operate under terms of reference which will stipulate that the Editorial Committee will:
  - (i) be adequately resourced and have powers to review and investigate all areas within the remit of the Editorial Committee;
  - (ii) be entitled to appoint external advisers to assist in the discharge of its functions;
  - (iii) meet as frequently as it considers necessary to discharge its functions, but in any event not fewer than four times a year;

- (iv) consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines and report any such representations to the 21CF Board; and
  - (v) advise the directors on any issues within its remit;
- (c) have exclusive authority over the following matters:
- (i) the selection and appointment of the Head of Sky News (including all aspects of the search and selection process);
  - (ii) the removal of the Head of Sky News;
  - (iii) the remuneration package of the Head of Sky News;
  - (iv) any material changes to the authority or reporting relationship of the Head of Sky News; and
  - (v) any future changes to the Sky News Editorial Guidelines;
- (the **Editorial Committee Authority**);
- (d) keep a written record of any matters escalated to it by the Head of Sky News as provided for in article 33(b)(iii), and provide a copy of any such record to the directors, the 21CF Board and [the Secretary of State/Ofcom/CMA] certified as accurate by one Independent Expert Director; and
- (e) on an annual basis, subject to no written records having been made under article 29(d) above in the preceding 12 months, prepare a statement confirming that no matters have been escalated to it by the Head of Sky News as provided for in article 33(b)(iii) , and provide a copy of any such statement to the directors, the 21CF Board and [the Secretary of State/Ofcom/CMA] certified as accurate by one Independent Expert Director.

### **30. Amendments to the Editorial Committee Authority**

The Editorial Committee Authority may not be amended or varied without the prior approval of [the Secretary of State/Ofcom/CMA].

### **31. Reminder and certification of policies**

The Editorial Committee shall ensure that Sky News staff:

- (a) receive regular reminders of the Sky News Editorial Guidelines and the internal disciplinary policies of 21CF and Sky; and
- (b) are asked to certify on an annual basis that they are aware of the guidelines and policies identified in article 31(b) and have complied with those policies as applicable.

## **SKY NEWS AND SKY NEWS EDITORIAL GUIDELINES**

### **32. Sky News**

The company's Sky News services shall abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code.

### **33. Sky News Editorial Guidelines**

- (a) The company shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the date of the adoption of these articles, as modified in accordance with article 33(c) (the **Sky News Editorial Guidelines**).
- (b) Save as amended in accordance with article 33(c), the Sky News Editorial Guidelines must specify that:
  - (i) the Head of Sky News retains complete operational (including setting commercial strategy and operating within the Newco Financial Envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority;
  - (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under article 33(b)(i), the Head of Sky News will escalate such matters to the Editorial Committee; and
  - (iv) in the event that any other member of Sky News' staff becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under article 33(b)(i), he or she shall report such matters to the Head of Sky News.
- (c) The company may not make any amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom/CMA].

### **AUDIT COMMITTEE AND TRANSACTIONS REQUIRING APPROVAL**

#### **34. Audit Committee establishment and terms of reference**

- (a) The company shall establish and maintain an Audit Committee, which shall consist exclusively of directors and will have the power to approve the transactions referred to in articles 35 and 36.
- (b) Subject to the provisions of these articles, the terms of reference of the Audit Committee shall be determined by the directors.

#### **35. Transactions requiring the approval of the Audit Committee**

The following transactions shall require the prior approval of the Audit Committee:

- (a) any transaction between the company and 21CF or Sky that involves or could reasonably involve the payment or receipt by the company or its subsidiaries of amounts of £[5] million or more or such other limits agreed by the company from time to time; and

- (b) any renewal of or material amendment to the Operational Agreements.

**36. Transactions requiring the approval of the Audit Committee and the directors**

Any transaction between the company and 21CF or Sky and/or any of their respective subsidiaries which involves or could reasonably involve the payment or receipt by the company or its subsidiaries of amounts of £[5] million or more shall require the prior approval of the Audit Committee and the directors.

**FINANCIAL ENVELOPE**

**37. Financial Envelope**

- (a) Following the recommendation to the 21CF Board for approval of the level of Newco Financial Envelope (as defined in the Undertakings) to be made by 21CF in the five-year period after the Initial Investment Period (as defined in the Undertakings), taking into account cost and revenue inflation, and market conditions, if 21CF notifies the company that 21CF does not intend to accept the directors' recommendation for the level of Newco Financial Envelope and the directors do not intend to amend their recommendation, the directors shall refer the matter to arbitration for final determination, in accordance with the provisions of Annex 5 to the Undertakings.
- (b) The Head of Sky News shall have full authority to manage the company within the scope of the Newco Financial Envelope (subject to these articles and applicable law).
- (c) The company will maintain financial records showing the annual Newco Financial Envelope by 21CF (the **Newco Investment Report**). The Newco Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State/Ofcom/CMA].

**SHARES AND DISTRIBUTIONS – SHARES**

**38. All shares to be fully paid up**

- (a) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- (b) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

**39. Powers to allot shares**

- (a) The directors may only exercise any power of the company to allot shares or to grant rights to subscribe for or convert any security into shares with such rights and restrictions with the prior written consent of all the shareholders from time to time. The powers of the directors under section 550 of the Companies Act 2006 are limited accordingly.
- (b) Subject to the articles, but without prejudice to paragraph (a) or to the rights attached to any existing share, the company may issue further classes of shares with such rights or restrictions as may be determined by ordinary resolution.
- (c) Sections 561 and 562 of the Companies Act are excluded.
- (d) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

- (e) In the event that rights and restrictions attaching to shares are determined by ordinary resolution or by the directors pursuant to this article, those rights and restrictions shall apply, in particular in place of any rights or restrictions that would otherwise apply by virtue of the Companies Act in the absence of any provisions in the articles of a company, as if those rights and restrictions were set out in the articles.

**40. Company not bound by less than absolute interests**

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

**41. Share certificates**

- (a) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- (b) Every certificate must specify:
  - (i) in respect of how many shares, of what class, it is issued;
  - (ii) the nominal value of those shares;
  - (iii) that the shares are fully paid; and
  - (iv) any distinguishing numbers assigned to them.
- (c) No certificate may be issued in respect of shares of more than one class.
- (d) If more than one person holds a share, only one certificate may be issued in respect of it.
- (e) Certificates must:
  - (i) have affixed to them the company's common or official seal and in the case of an official seal, unless otherwise determined by the directors, the certificate does not need to be signed; or
  - (ii) be otherwise executed in accordance with the Companies Act.

**42. Replacement share certificates**

- (a) If a certificate issued in respect of a shareholder's shares is:
  - (i) damaged or defaced; or
  - (ii) said to be lost, stolen or destroyed,that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- (b) A shareholder exercising the right to be issued with such a replacement certificate:
  - (i) may at the same time exercise the right to be issued with a single certificate or separate certificates;

- (ii) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
- (iii) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

#### **43. Share transfers**

- (a) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- (b) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (c) The company may retain any instrument of transfer which is registered.
- (d) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- (e) The directors may refuse to register the transfer of a share unless:
  - (i) it is lodged at the registered office or at such place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
  - (ii) it is in respect of one class of shares only; and
  - (iii) it is in favour of not more than four transferees.

#### **44. Transmission of shares**

- (a) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- (b) A transmittee who produces such evidence of entitlement to shares as the directors may properly require:
  - (i) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
  - (ii) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (c) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

#### **45. Exercise of transmittees' rights**

- (a) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (b) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

- (c) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

**46. Transmittees bound by prior notices**

If a notice is given to a shareholder in respect of shares and a transmittee (or a transferee nominated by such transmittee pursuant to article 45) is entitled to those shares, the transmittee (or transferee) is bound by the notice if it was given to the shareholder before the transmittee's (or transferee's) name has been entered in the register of members.

**DIVIDENDS AND OTHER DISTRIBUTIONS**

**47. Procedure for declaring dividends**

- (a) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (b) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (c) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (d) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- (e) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- (f) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- (g) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

**48. Payment of dividends and other distributions**

- (a) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
  - (i) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (ii) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (iii) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or



- (iv) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- (b) In the articles, the **distribution recipient** means, in respect of a share in respect of which a dividend or other sum is payable:
- (i) the holder of the share; or
  - (ii) if the share has two or more joint holders, whichever of them is named first in the register of members; or
  - (iii) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

**49. No interest on distributions**

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of that share and the company.

**50. Unclaimed distributions**

(a) All dividends or other sums which are:

- (i) payable in respect of shares; and
- (ii) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(b) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(c) If:

- (i) twelve years have passed from the date on which a dividend or other sum became due for payment; and
- (ii) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

**51. Non-cash distributions**

(a) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(b) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

- (i) fixing the value of any assets;
- (ii) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (iii) vesting any assets in trustees.

**52. Waiver of distributions**

(a) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if:

- (i) the share has more than one holder; or
- (ii) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

**SHARE BUYBACKS**

**53. Buybacks out of capital**

The company may purchase its own shares in accordance with (and up to the maximum limits set out in) section 692(1ZA) of the Companies Act.

**CAPITALISATION OF PROFITS**

**54. Authority to capitalise and appropriation of capitalised sums**

- (a) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
- (i) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
  - (ii) appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.
- (b) Capitalised sums must be applied:
- (i) on behalf of the persons entitled; and
  - (ii) in the same proportions as a dividend would have been distributed to them.
- (c) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (d) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

- (e) Subject to the articles the directors may:
  - (i) apply capitalised sums in accordance with paragraphs (c) and (d) partly in one way and partly in another;
  - (ii) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - (iii) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## **DECISION-MAKING BY SHAREHOLDERS – ORGANISATION OF GENERAL MEETINGS**

### **55. Notice of general meeting**

A shareholder present either in person or by proxy, at any general meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which the meeting was convened.

### **56. Attendance and speaking at general meetings**

- (a) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (b) A person is able to exercise the right to vote at a general meeting when:
  - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (c) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (d) In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- (e) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **57. Quorum for general meetings**

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### **58. Chairing general meetings**

- (a) The chairman shall chair general meetings if present and willing to do so.

- (b) If the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
  - (i) the directors present; or
  - (ii) (if no directors are present), the meeting,

must appoint a director to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

- (c) The person chairing a meeting in accordance with this article is referred to as the **chairman of the meeting**.

#### **59. Attendance and speaking by directors and non-shareholders**

- (a) Directors may attend and speak at general meetings, whether or not they are shareholders.
- (b) The chairman of the meeting may permit other persons who are not:
  - (i) shareholders of the company; or
  - (ii) otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

#### **60. Adjournment**

- (a) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- (b) The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
  - (i) the meeting consents to an adjournment; or
  - (ii) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (c) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- (d) When adjourning a general meeting, the chairman of the meeting must:
  - (i) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
  - (ii) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (e) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
  - (i) to the same persons to whom notice of the company's general meetings is required to be given; and

- (ii) containing the same information which such notice is required to contain.
- (f) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **VOTING AT GENERAL MEETINGS**

### **61. Voting: general**

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

### **62. Errors and disputes**

- (a) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- (b) Any such objection must be referred to the chairman of the meeting, whose decision is final.

### **63. Poll votes**

- (a) A poll on a resolution may be demanded:
  - (i) in advance of the general meeting where it is to be put to the vote; or
  - (ii) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (b) A poll may be demanded by:
  - (i) the chairman of the meeting;
  - (ii) the directors;
  - (iii) two or more persons having the right to vote on the resolution; or
  - (iv) a person or persons representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (c) A demand for a poll may be withdrawn if:
  - (i) the poll has not yet been taken; and
  - (ii) the chairman of the meeting consents to the withdrawal.
- (d) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **64. Content of proxy notices**

- (a) Proxies may only validly be appointed by a notice in writing (a **proxy notice**) which:
  - (i) states the name and address of the shareholder appointing the proxy;
  - (ii) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

- (iii) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (iv) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate.
- (b) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
  - (c) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
  - (d) Unless a proxy notice indicates otherwise, it must be treated as:
    - (i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
    - (ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

**65. Delivery of proxy notices etc.**

- (a) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (b) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (c) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (d) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

**66. Amendments to resolutions**

- (a) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
  - (i) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
  - (ii) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (b) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - (i) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

- (ii) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (c) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

#### **ADMINISTRATIVE ARRANGEMENTS**

##### **67. Means of communication to be used**

- (a) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
- (b) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- (c) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

##### **68. When a communication from the company is deemed received**

- (a) Any document or information, if sent by first class post, shall be deemed to have been received on the day following that on which the envelope containing it is put into the post, or, if sent by second class post, shall be deemed to have been received on the second day following that on which the envelope containing it is put into the post and in proving that a document or information has been received it shall be sufficient to prove that the letter, envelope or wrapper containing the document or information was properly addressed, prepaid and put into the post.
- (b) Any document or information not sent by post but left at a registered address or address at which a document or information may be received shall be deemed to have been received on the day it was so left.
- (c) Any document or information, if sent or supplied by electronic means, shall be deemed to have been received on the day on which the document or information was sent or supplied by or on behalf of the company.
- (d) If the company receives a delivery failure notification following a communication by electronic means in accordance with paragraph (c), the company shall send or supply the document or information in hard copy or electronic form (but not by electronic means) to the shareholder either personally or by post addressed to the shareholder at his registered address or by leaving it at that address. This shall not affect when the document or information was deemed to be received in accordance with paragraph (c).
- (e) Every person who becomes entitled to a share shall be bound by every notice in respect of that share which before his name is entered in the register of members was given to the person from whom he derives his title to the share.

##### **69. Notices in writing given to the company by majority shareholders**

Any notice in writing given to the company by the holders of a majority of the shares shall take effect when it is lodged at the registered office or produced to any directors' meeting.

## **70. Company seals**

- (a) Any common seal may only be used by the authority of the directors or of a committee of the directors.
- (b) The directors may decide by what means and in what form any common seal is to be used.
- (c) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- (d) For the purposes of this article, an authorised person is:
  - (i) any director of the company;
  - (ii) the company secretary (if any); or
  - (iii) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.
- (e) The company may exercise the powers conferred by the Companies Act with regard to having official seals and those powers shall be vested in the directors. Subject to the Companies Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, and affixed in such manner as the directors may from time to time determine.

## **71. No right to inspect accounts and other records**

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

## **72. Provision for employees on cessation of business**

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

## **WINDING UP**

### **73. Winding up**

If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Companies Act, divide among the shareholders *in specie* the whole or any part of the assets of the company and may, for that purpose, value any assets and determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the shareholders as he with like sanction determines, but no shareholder shall be compelled to accept any assets upon which there is liability.

## **DIRECTORS' INDEMNITY AND INSURANCE**



#### 74. Indemnity

- (a) Subject to paragraph (e), a relevant director of the company or of an associated company may be indemnified out of the company's assets against:
  - (i) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;
  - (ii) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act);
  - (iii) any other liability incurred by that director as an officer of the company or an associated company.
- (b) The company may fund the expenditure of a relevant director of the company or of any associated company for the purposes permitted under the Companies Act and may do anything to enable such relevant director to avoid incurring such expenditure as provided in the Companies Act.
- (c) No relevant director of the company or of any associated company shall be accountable to the company or the shareholders for any benefit provided pursuant to this article and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the company.
- (d) The powers given by this article shall not limit any general powers of the company to grant indemnities, purchase and maintain insurance or provide funds (whether by way of loan or otherwise) to any person in connection with any legal or regulatory proceedings or applications for relief.
- (e) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Act or by any other provision of law.
- (f) In this article and in article 75:
  - (i) companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
  - (ii) a **relevant director** means any director or former director of the company or of an associated company.

#### 75. Insurance

- (a) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.
- (b) In this article, a relevant loss means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company.

## ANNEX 2

### FORM OF PERSONAL UNDERTAKING TO THE SECRETARY OF STATE

#### UNDERTAKINGS GIVEN BY [RUPERT/JAMES/LACHLAN] MURDOCH PURSUANT TO PARAGRAPH 9 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

#### WHEREAS:

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (d) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (e) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (f) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (g) Whereas under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (h) The Secretary of State considers that the undertakings given below by [Rupert/James/Lachlan] Murdoch, in addition to the undertakings given by 21CF, [Rupert/James/Lachlan] Murdoch and [Rupert/James/Lachlan] Murdoch are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** [Rupert/James/Lachlan] Murdoch hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the Transaction.

#### 27. EFFECTIVE DATE OF THE UNDERTAKINGS

- 27.1 These undertakings shall take effect (subject to the variation and termination provisions in section 29) from the date that, having been signed by [Rupert/James/Lachlan] Murdoch, they are accepted by the Secretary of State.

## **28. NON-INTERFERENCE WITH SKY NEWS' EDITORIAL INDEPENDENCE**

- 28.1 [Rupert/James/Lachlan] Murdoch shall not influence or attempt to influence, or seek to cause any other person to influence, the editorial choices made by the Head of Sky News or the Head of Sky News' delegates (including, but not limited to, the selection, prominence or running of news stories or the political comment and opinion to be broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, or in any other way seek to bring about changes to the editorial output of Sky News).

## **29. VARIATION AND TERMINATION**

- 29.1 These undertakings shall remain in force until such time as they are varied, released or superseded under the Order.
- 29.2 In the event of a material change of circumstances, the Secretary of State may, in response to a request from [Rupert/James/Lachlan] Murdoch, vary or release one or more of these undertakings. Upon receipt of such a request, the Secretary of State shall consult the CMA on whether the change of circumstances identified in the request results in the adverse effects identified in the Secretary of State's Decision ceasing to apply.
- 29.3 The variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **30. COMPLIANCE**

- 30.1 [Rupert/James/Lachlan] Murdoch shall comply promptly with such written directions as the Secretary of State may from time to time give:
- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

## **31. PROVISION OF INFORMATION**

- 31.1 [Rupert/James/Lachlan] Murdoch shall furnish promptly to [the Secretary of State/Ofcom/CMA] such information as [the Secretary of State/Ofcom/CMA] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## **32. INTERPRETATION**

- 32.1 These undertakings shall be interpreted in accordance with the provisions of section 9 of the undertakings given by 21CF pursuant to paragraph 9 of Schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 in relation to the offer by 21CF for the remaining shares in Sky plc.

## ANNEX 3

### UPDATED SKY NEWS EDITORIAL GUIDELINES

[Section 2 only]

#### *2. Editorial independence of Sky News*

The Head of Sky News retains complete operational (including setting commercial strategy and operating within Sky News' financial envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News).

#### **Instructions to Sky News Editorial Staff**

Subject to general compliance procedures and oversight, instructions to Sky News editorial staff (including journalists) shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority. You should not take instructions on these matters from anyone else.

#### **Attempts to influence**

In the event that you become aware of an attempt by any employee, officer or director of the 21st Century Fox group or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News, you must report this immediately to the Head of Sky News. The Head of Sky News will escalate any such attempt to the Editorial Committee of the Sky News Board.

## ANNEX 4

### NEWCO FINANCIAL ENVELOPE

	FY 2016/17 £m	Further details
Revenues <sup>205</sup>	[X]	Includes: wholesale of Sky News channel [X]; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs <sup>206</sup>	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
Incremental costs expected to be incurred operating the Sky News business as a separate corporate entity	[●]	
<b>NewCo Financial Envelope</b>	<b>[X]</b>	

<sup>205</sup> Does not include: Sky Media [X]% sales commission for provision of ad sales.

<sup>206</sup> Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.

## ANNEX 5

### ARBITRATION OF DISAGREEMENTS BETWEEN 21CF AND THE NEWCO BOARD REGARDING INVESTMENT IN NEWCO

1. Any disagreement referred to arbitration pursuant to section 14.3 above as to the level of NewCo Financial Envelope to be made by 21CF under section 14.1 above shall be finally resolved by baseball arbitration under the LCIA Arbitration Rules as amended from time to time (for the purpose of this annex, the **Rules**).
2. Capitalised terms used in this annex which are not otherwise defined in these undertakings shall have the meaning given to them in the Rules.
3. **Appointment of Arbitrator.** The number of arbitrators shall be one. 21CF and the NewCo Board (each a Party) shall jointly nominate the sole arbitrator for appointment by the LCIA Court. If 21CF and the NewCo Board fail to nominate an arbitrator within 10 business days of referring the matter for arbitration, the LCIA Court shall appoint an English-speaking arbitrator that has substantial experience of the UK media sector and of financial and/or accounting matters.
4. **Written Submissions.** Within twenty (20) days after the appointment of the arbitrator by the LCIA Court, each Party shall submit to the arbitrator a proposed level of NewCo Financial Envelope to be made by 21CF under section 14.1 above, supported by written submissions, relevant factual (documentary) evidence and one expert report (the **Proposals**). Within fifteen (15) days after the delivery of the Proposals to the arbitrator, each Party may submit a written rebuttal of the other Party's Proposal (**Rebuttals**) and may also amend and re-submit its original Proposal.
5. **Hearing.** Unless otherwise agreed, the Parties and the arbitrator shall meet within fifteen (15) days after the Parties have submitted their Proposals (and Rebuttals, if any), at which time each Party shall have two (2) hours to argue in support of its Final Proposal, including any presentation by their appointed experts (the **Hearing**). The Parties shall not have the right to call any witnesses in support of their arguments, nor compel any production of documents or take any discovery from the other Party in preparation for the Hearing.
6. **Award.** Within thirty (30) days after the Hearing, the arbitrator shall select one of the final Proposals as the resolution of the Dispute, by reference to the factors for determining the level of NewCo Financial Envelope identified in section 14.1 above. The arbitrator may not alter the terms of either final Proposal and may not resolve the Dispute in a manner other than by selection of one of the submitted final Proposals. If a Party fails to submit a Proposal within the initial twenty (20)-day time frame set forth above, the arbitrator shall select the Proposal of the other Party as the resolution of the Dispute.
7. The seat or legal place of arbitration shall be London.
8. The language used in the arbitral proceedings shall be English.
9. Notwithstanding any provision to the contrary in the Rules, 21CF and the NewCo Board shall agree that any arbitrator may have the same nationality as any party to the arbitration.
10. As at the Sky News Business Transfer, 21CF will enter into a binding arbitration agreement with NewCo to give effect to the provisions of this annex.

# Appendix O: Fox Divestiture remedy and indicative Divestiture timeline and steps

## OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC

UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 9 OF  
SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER  
2003

### WHEREAS:

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 20 September 2017 the Secretary of State, in exercise of her powers under Article 5(3) of the Order in connection with the Transaction, made a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group might investigate and report on the questions referred to in Articles 6(2), (3) and (4) of the Order within the period set down in Article 9 of the Order (the **Reference**).
- (d) On [●] the Secretary of State received a report of the CMA under Article 8 of the Order.
- (e) On [●] the Secretary of State published his decision in connection with the Transaction under Article 12(2) of the Order (the **Decision**). In the Decision, the Secretary of State decided that the conditions set out in Article 12 (6)(a) – (c) are met.
- (f) Under Article 12(7) of the Order, the Secretary of State has a discretion to take such action under paragraph 9 or 11 of Schedule 2 to the Order as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which he has decided may be expected to result from the creation of the European relevant merger situation.
- (g) Under paragraph 9 of Schedule 2 to the Order, the Secretary of State may accept undertakings as he considers appropriate to remedy, mitigate or prevent such effects.
- (h) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which the Secretary of State has decided may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

### 33. EFFECTIVE DATE OF THE UNDERTAKINGS

- 33.1 These undertakings shall take effect (subject to the variation and termination provisions in section [22]) from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

#### **34. CREATION OF NEWCO**

- 34.1 21CF shall incorporate NewCo as a private limited company, which will be a wholly owned subsidiary of Sky, at the Closing Date or as soon as reasonably practicable following the Closing Date, subject to any extension of time agreed with the consent of the Secretary of State.
- 34.2 21CF shall take (or procure the taking of) the following steps to achieve the formation of NewCo:
- (i) the formation of NewCo as a new private limited company incorporated under the laws of England and Wales as a Subsidiary of Sky; and
  - (ii) the establishment of the corporate governance arrangements set out in section [11] below.
- 34.3 On or as soon as reasonably practicable following the formation of NewCo, 21CF shall take (or procure the taking of) the following steps to achieve the transfer of the business of Sky News to NewCo:
- (i) the transfer of the business of Sky News (as set out in section [15] below) into NewCo in exchange for shares in NewCo; and
  - (ii) the entering into of the agreements between Sky and NewCo set out in sections [15.4 and 40] below.

#### **35. CORPORATE GOVERNANCE OF NEWCO**

- 35.1 21CF shall ensure that the corporate governance structure of NewCo shall be established and maintained prior to the Divestiture Date as follows:
- (i) the articles of association of NewCo shall provide that the object of NewCo is to maintain a Sky-branded news service received primarily in the UK which will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code. The articles of association of NewCo shall be [in a form to be approved by the Secretary of State prior to the Effective Date]/[in the form attached as **Annex 1** to these undertakings];
  - (ii) the articles of association of NewCo shall provide that the NewCo Board shall:
    - (A) comprise solely members who are Independent Directors and consist of a [minimum of [5] Independent Directors and a maximum of [7]] Independent Directors, with such members;
      - I. initially comprising [3] existing Sky independent directors and [2] members nominated by the Sky independent directors. Each such appointment shall meet the definition of Independent Director contained in these undertakings; and
      - II. on the resignation or removal of an Independent Director, the remaining Independent Directors in office at such date shall nominate and appoint a new Independent Director to maintain at least the minimum number of Independent Directors of NewCo, if required;



- (B) be chaired by an Independent Director with senior editorial and/or journalistic experience;
  - (C) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present; and
- (iii) the articles of association of NewCo shall provide that the NewCo Board and its committees shall have the appropriate balance of skills, experience, independence and knowledge of NewCo to enable them to discharge their respective duties and responsibilities effectively and that at least one Independent Director must have senior editorial and/or journalistic experience.
- 35.2 21CF shall not cause, or attempt to cause, NewCo to act in breach of its articles of association.
- 36. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES AND OTHER POLICIES**
- 36.1 21CF shall ensure that the articles of association of NewCo shall provide that NewCo shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section [13.2] below and as attached at **Annex 2** to these undertakings (the **Sky News Editorial Guidelines**).
- 36.2 21CF shall ensure that the Sky News Editorial Guidelines specify that:
- (i) the Head of Sky News retains complete operational (including setting commercial strategy and operating within the NewCo Financial Envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
  - (iii) in the event that any member of Sky News' staff becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under section [13.2(i)], he or she shall report such matters to the Head of Sky News.
- 36.3 21CF shall ensure that the articles of association of NewCo shall provide that NewCo may not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom/CMA].
- 36.4 With effect from the Closing Date, 21CF will ensure that the internal disciplinary policies of 21CF and Sky require that:
- (i) any attempt by an employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head

of Sky News under section [13.2(i)] will be treated as a serious disciplinary matter that may render the individual liable to summary dismissal; and

- (ii) any reprisal by an employee, officer or director of 21CF or Sky against a member of Sky News staff for making a good faith report under section [13.2(iv)] above is prohibited and will be treated as a serious disciplinary matter that may render the individual liable to summary dismissal.

### **37. COMMITMENT TO MAINTAIN FINANCIAL ENVELOPE**

37.1 21CF shall ensure that it is a term of the Divestiture Agreement that Disney undertakes to 21CF to:

- (a) maintain the operating investment in NewCo at a level not materially different (taking into account cost inflation) from [X] (the **NewCo Disney Financial Envelope**), for 5 years from the Divestiture Date (the **Initial Period**); and
- (b) in the five-year period thereafter, conditional upon receipt by NewCo of the NewCo 21CF Financial Envelope, to maintain the NewCo Disney Financial Envelope at a level not materially different to the preceding period (taking into account cost inflation and market conditions).

37.2 21CF shall (and shall ensure that it is a term of the Divestiture Agreement that 21CF shall) pay to NewCo an amount [X] for the first financial year (adjusted on a *pro rata* basis according to the number of days that have elapsed between the date of that payment and the Divestiture Date), increased by CPI for each following full financial year, for 10 years from the Divestiture Date (the **NewCo 21CF Financial Envelope**), each such amount to be paid as a single lump sum each year.

### **38. SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO**

38.1 21CF shall cause the Sky News business to be transferred, as a going concern and on a cash-free, debt-free basis, to NewCo (the **Sky News Business Transfer**); provided, however, that NewCo will assume only ordinary course operational liabilities (commonly referred to as “on-balance sheet liabilities”) and, for the avoidance of doubt, NewCo will not assume (i) any liabilities arising out of or relating to violations of applicable laws, rules or regulations, (ii) any environmental liabilities or (iii) any liabilities arising out of or relating to any alleged wrongdoing by the Sky News business or any of its representatives. This will require the transferring or making available of those assets required to conduct the Sky News business, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

- (i) all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News’ business (including, for example, broadcasting and newsgathering facilities and equipment). Arrangements will also be made for NewCo to have the use of assets required or currently used to conduct the Sky News business but which are not used exclusively in the Sky News business on a royalty-free basis if so requested by NewCo;
- (ii) all or substantially all intangible assets currently used exclusively for the purposes of carrying on Sky News’ business (including, for example, Sky News produced content, including video and audio and archive footage and related consumer-facing software and applications, including the Sky News website and social media accounts). Arrangements will also be made for NewCo to have the use of other intangible assets required or currently used to

conduct the Sky News business but which are not used exclusively in the Sky News business on a royalty-free basis if so requested by NewCo;

- (iii) all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff (UK and international staff), production, online and multimedia staff;
- (iv) all relevant customer, credit and other records; and
- (v) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of the Sky News business, including broadcast licences (and, to the extent that such licences, permits, consents or authorisations are not capable of transfer, 21CF will endeavour to assist NewCo in applying for new licences, permits, consents or authorisations).

38.2 21CF shall (subject to customary limitations) not solicit staff transferred to NewCo for a period beginning on the Closing Date and ending 24 months after the date of the incorporation of NewCo as a private limited company.

38.3 Without prejudice to the generality of section [15.1] above, and subject to obtaining the necessary third party consents, 21CF shall also use all reasonable endeavours to procure that there will be transferred to NewCo or that NewCo will otherwise have the benefit of:

- (i) general commercial contracts for the sale and distribution of Sky News content to third parties, including (i) video content on third party TV, online and mobile services and (ii) audio content on third party radio services;
- (ii) content supply contracts for the provision of news content by third parties to Sky News, including contracts for the provision of still images, text, graphics and video;
- (iii) UK/Ireland distribution agreements, being the carriage agreements between Sky and third parties for the supply of the Sky News channel on third party platforms; and
- (iv) international distribution agreements, being the carriage agreements between Sky and non-UK/Ireland third parties for the supply of the international feed of the Sky News channel for distribution on international third party platforms.

38.4 21CF shall ensure that Sky will enter into a **Brand Licensing Agreement** with NewCo, under which NewCo will receive a perpetual licence of the Sky News brand in a form to be approved by the Secretary of State prior to the Effective Date.

38.5 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in section [15.4] above shall:

- (i) permit NewCo to use the Sky News brand in connection with its news output;
- (ii) not provide Sky or 21CF with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of NewCo; and

- (iii) be terminable by Sky in the event of a material breach that has not been cured, in the event that NewCo ceases to provide output which is branded “Sky News” and/or in the event that NewCo ceases to broadcast Sky News in the UK.

### 39. NEWCO TO BE TRANSFERRED TO DISNEY

Prior to the date of these undertakings, 21CF will enter into a binding agreement (the **Divestiture Agreement**) with Disney for the sale of NewCo by 21CF to Disney on the terms set forth in this Section 7 and in accordance with the share purchase agreement in the form attached as **Annex 3**:

- (a) 21CF shall procure that Sky sells, and Disney shall buy, the entire issued share capital of NewCo (the date of the transfer of NewCo to Disney being the **Divestiture Date**), such sale and purchase to be conditional upon (i) the Sky News Business Transfer having occurred, (ii) the Closing Date having occurred, and (iii) any applicable regulatory approvals that Disney requires to acquire NewCo and the Sky News business having been obtained;
- (b) the Divestiture Agreement shall include the undertakings of Disney and 21CF set out in section [14 above]; and
- (c) Disney shall undertake to 21CF that Disney shall, for a period of 10 years from the Divestiture Date:
  - (i) maintain the corporate governance structure of NewCo described in the first sentence of section 35.1(i) above;
  - (ii) ensure that the articles of association of NewCo provide that NewCo may not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom/CMA]; and
  - (iii) not cause, or attempt to cause, NewCo to act in breach of its articles of association.

### 40. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

40.1 21CF shall ensure that Sky will, on or before the Sky News Business Transfer, enter into the agreements listed below with NewCo under which Sky will provide facilities and support services to NewCo, on arm’s-length terms (and which will be included in the incremental costs expected to be incurred in operating the Sky News business as a separate corporate entity, as reflected in the NewCo 21CF Financial Envelope):

- (i) an advertising sales agreement between NewCo and Sky under which Sky will sell advertising and sponsorship on behalf of NewCo for a term of 10 years subject to an annual minimum guarantee of [£], increased by CPI for each following year for the remainder of the term;
- (ii) a lease of land and buildings under which Sky will agree to lease the Sky News land and buildings (or relevant parts thereof) to NewCo for a period of 10 years (with a 5-year renewal right). In the event that existing contractual restrictions preclude the granting of such a lease, Sky will ensure equivalent access for Sky News to the relevant land and buildings for the same period;

- (iii) a site support services agreement under which Sky will agree to provide certain support services to NewCo while NewCo leases premises from Sky including IT support services for a term comparable with the term of the lease;
- (iv) one or more agreements in relation to broadcast and technical services under which Sky will offer to NewCo:
  - (A) an **EPG Services Agreement** (subject to EPG regulation including Ofcom's Code of Practice on EPGs, and Sky's published "Method for allocating listings in Sky's EPG");
  - (B) satellite capacity;
  - (C) playout;
  - (D) uplink;
  - (E) DTT transmission;
  - (F) online transmission; and
  - (G) mobile distribution,

in each case for a term of up to [10] years (or such shorter time as required by NewCo) ; and

- (v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off-screen design services) agreements.

- 40.2 Each of the agreements set out at [16.1(i) to 16.1(v)] above will be terminable by NewCo on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.
- 40.3 21CF shall ensure that the agreements listed in sections [16.1(iii), 16.1(iv) and 16.1(v)] above will provide that charges to NewCo are set for the first year at a combined price reflected in the NewCo 21CF Financial Envelope). Thereafter the total charge to NewCo for such agreements will be based upon the initial combined price increased by CPI for each following year for the remainder of the agreement.
- 40.4 21CF shall grant NewCo reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that NewCo reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from NewCo, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.
- 40.5 In the event any additional services have historically been provided to the Sky News business by Sky, 21CF will ensure that Sky will, on or before the Sky News Business Transfer, enter into any additional services agreement as are necessary in order for NewCo to continue to operate the Sky News business and associated costs shall increase the NewCo 21CF Financial Envelope.

#### **41. APPOINTMENT OF MONITORING TRUSTEE**

- 41.1 Within 20 Working Days of the Effective Date, 21CF shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by 21CF. The Monitoring Trustee so approved shall be appointed by 21CF within 7 Working Days.
- 41.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 41.3 The Monitoring Trustee shall be independent of 21CF, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 41.4 If the person nominated by 21CF pursuant to section [17.1] above is not approved by the Secretary of State, 21CF shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in [17.1] above.
- 41.5 In the event that:
- (i) 21CF fails to nominate any person or persons in accordance with the provisions of section [17.1 above] or [17.4 above]; or
  - (ii) none of the persons nominated by 21CF pursuant to section [17.1 above] or [17.4 above] is approved by the Secretary of State; or
  - (iii) 21CF is unable for any reason to conclude within the time limit stipulated in section [17.1 above] the appointment of any such person following approval by the Secretary of State,

21CF shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. 21CF shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

- 41.6 21CF shall secure that a Monitoring Trustee is appointed in accordance with sections [17.1 to 17.5] above prior to the Closing Date.
- 41.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), 21CF shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections [17.1 to 17.4] above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, 21CF shall appoint a Monitoring Trustee in accordance with section [17.5] above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.
- 41.8 The Monitoring Trustee shall remain in place until all of the operational agreements detailed in section [16.1] above become effective.

- 41.9 21CF shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.
- 42. FUNCTIONS OF MONITORING TRUSTEE**
- 42.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.
- 42.2 The Monitoring Trustee shall monitor 21CF's compliance with all and any part of these undertakings prior to the Divestiture Date and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section [16.1] above which require his prior approval.
- 42.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.
- 42.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the CMA if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section [21.2] below). If the Monitoring Trustee sends a report to the Secretary of State or to the CMA under this section [18.4], the Monitoring Trustee shall, at the same time, inform 21CF of such a report being sent.
- 42.5 The Monitoring Trustee shall ensure that:
- (i) no arrangements are put in place or completed that affect the ability of 21CF to comply with its obligations under these undertakings; and
  - (ii) 21CF takes no action or makes no omission that might adversely affect 21CF's compliance with its obligations under these undertakings.
- 42.6 The Monitoring Trustee shall:
- (i) facilitate the provision of information by 21CF to the Secretary of State in accordance with section [20] of these undertakings; and
  - (ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section [21.2] below).
- 42.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of 21CF, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.
- 42.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section [18.2] above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert

in this area and independent of 21CF and NewCo. 21CF will bear all reasonable costs incurred by the Monitoring Trustee under this section [18.8].

#### **43. REMUNERATION OF MONITORING TRUSTEE**

43.1 21CF shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

#### **44. OBLIGATIONS OF 21CF FOLLOWING APPOINTMENT OF MONITORING TRUSTEE**

44.1 21CF shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

44.2 21CF shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:

(i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section [18.7 above]; and

(ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of 21CF, Sky and NewCo as the Monitoring Trustee may reasonably require access to.

44.3 If 21CF has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and [the Secretary of State] immediately.

#### **45. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE**

45.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and [the CMA/Ofcom] a statement certifying whether or not, in his view, 21CF has complied with these undertakings in the preceding four weeks.

45.2 When providing its reports to the Secretary of State and [the CMA/Ofcom] the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or [the CMA/Ofcom] which 21CF would be entitled to withhold from the Secretary of State or [the CMA/Ofcom] (as applicable) on the grounds of legal privilege.

45.3 All communications between the Monitoring Trustee and the Secretary of State and [the CMA/Ofcom] shall be confidential and should not be disclosed to 21CF, save with the express written permission of the Secretary of State and/or [the CMA/Ofcom]. For the avoidance of doubt, nothing in this section [21.3] shall restrict the Monitoring Trustee from informing 21CF of any report sent to the Secretary of State or to [the CMA/Ofcom] under section [18.4] above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Act. The Monitoring Trustee shall not disclose such communications to third parties.



#### **46. VARIATION AND TERMINATION**

- 46.1 These undertakings shall remain in force until such time as they are varied, released or superseded under the Order.
- 46.2 In the event of a material change of circumstances, the Secretary of State may, in response to a request from 21CF, vary or release one or more of these undertakings. Upon receipt of such a request, the Secretary of State shall consult the CMA on whether the change of circumstances identified in the request results in the adverse effects identified in the Secretary of State's Decision ceasing to apply.
- 46.3 The variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

#### **47. COMPLIANCE**

- 47.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:
- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 47.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.
- 47.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section [23.3].

#### **48. INTERIM ACTION**

- 48.1 From the Closing Date until the Divestiture Date, 21CF shall ensure that (except with the prior written consent of the Secretary of State or for the purposes of preparing for the transfer of the Sky News business to NewCo, the transfer of NewCo to Disney and/or effecting the incorporation of NewCo as a private limited company):
- (i) without 21CF accepting any duty to provide any substantial capital expenditure to the Sky News business in addition to the capital expenditure plans in place at the time of the Transaction, the Sky News business (as at the Closing Date) is maintained as a going concern and sufficient resources are made available by 21CF for the continuation of the Sky News business on the basis of its pre-merger business plan;
  - (ii) no material changes are made to the organisational structure of the Sky News business or the management responsibilities within the Sky News business, other than in the ordinary course of business;

- (iii) the Sky News business, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;
- (iv) 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or member of the 21CF Board, will influence or attempt to influence, or seek to cause any other person to influence, the editorial decisions of the Sky News business or the editorial choices made by the Head of Sky News or the Head of Sky News' delegates (including, but not limited to, the selection, prominence or running of news stories or the political comment and opinion to be broadcast on the Sky News services that will be transferred to NewCo, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services or in any other way seek to bring about changes to the editorial output of Sky News) prior to the Divestiture Date;
- (v) the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;
- (vi) the separate brand identity of the Sky News business is maintained;
- (vii) no assets of the Sky News business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (viii) there is no new integration of the information technology used by Sky with that used by the Sky News business and the software and hardware platforms of the Sky News business shall remain unchanged, except for changes and maintenance in the ordinary course of business; and
- (ix) all reasonable steps are taken to encourage all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business (as set out in section [15.1] above) to remain with the Sky News business.

48.2 21CF shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by 21CF with these undertakings.

#### **49. DIVESTITURE OF NEWCO TO TRUST COMPANY**

49.1 If the conditions to the sale and purchase of the shares in NewCo under the Divestiture Agreement have not been satisfied or waived on or before the Long Stop Date under the Divestiture Agreement:

- (i) 21CF shall promptly notify the Monitoring Trustee and the Secretary of State in writing;
- (ii) 21CF shall divest NewCo to a trust company (**Trustco**) in accordance with the provisions of this section [17]; and
- (iii) sections [49.2 to 49.10] below shall have effect.

49.2 21CF shall as soon as reasonably practicable (and in any event within one month, unless otherwise agreed with the Monitoring Trustee) incorporate Trustco as a private limited

company, which will be a wholly-owned direct or indirect subsidiary of 21CF, and cause Sky to transfer all of the issued share capital of NewCo to Trustco for nil consideration.

- 49.3 As soon as reasonably practicable following the transfer of NewCo to Trustco, 21CF shall transfer or cause the transfer of all of the issued share capital of Trustco for nil consideration to the Independent Directors of NewCo or to other persons approved by the Secretary of State in writing (the **Trustco Transfer**).
- 49.4 21CF shall ensure that the corporate governance structure of Trustco shall be established in a form agreed with the Monitoring Trustee and approved by the Secretary of State as suitable to secure the continued operation of Sky News as an editorially independent and impartial news service. In particular, unless the Secretary of State requires otherwise:
- (i) the initial directors of Trustco shall be Independent Directors of NewCo, or other persons approved by the Secretary of State in writing as suitable in light of Trustco's object, as set out in section [49.4(ii)(A)] below; and
  - (ii) the articles of association of Trustco shall provide that:
    - (A) the object of Trustco is to ensure that NewCo maintains a Sky-branded news service received primarily in the UK and to secure and preserve the editorial independence of Sky News;
    - (B) each of the directors of the Trustco Board shall have a duty to ensure that NewCo maintains a Sky-branded news service received primarily in the UK, and that NewCo's Sky News services will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code;
    - (C) no shareholder of Trustco may hold shares in Trustco unless he or she is an Independent Director on the NewCo Board or has been approved by the Secretary of State in writing;
    - (D) no shareholder of Trustco may transfer shares in Trustco unless 75% of the Trustco Board approves in writing;
    - (E) no person may become a shareholder or director of Trustco unless he or she has first given an undertaking to Trustco to exercise the rights attaching to shares or powers as a director of Trustco in a manner consistent with the object of Trustco identified in section [49.4(ii)(A)] above;
    - (F) no disposal of NewCo shall take place without the approval of at least 75% of the Trustco Board;
    - (G) the members of Trustco may not make any subsequent amendments to the articles of association of Trustco without the prior approval of [the Secretary of State/Ofcom/CMA];
    - (H) Trustco may not make any subsequent amendments to the articles of association of NewCo without the prior approval of [the Secretary of State/Ofcom/CMA]; and
    - (I) Trustco shall not cause, or attempt to cause, NewCo to act in breach of its articles of association.

- 49.5 21CF shall maintain: (i) the Operational Net Investment in NewCo at a level not materially different (taking into account cost and revenue inflation) from the aggregate of Sky's Operational Net Investment in Sky News; plus (ii) the incremental costs expected to be incurred in operating the Sky News business as a separate corporate entity, in each case as set out in the Schedule attached under **Annex 4 (the NewCo Trust Financial Envelope)**, for 10 years from the Trustco Transfer (the **Initial Investment Period**). In the five-year period thereafter, 21CF shall maintain the NewCo Trust Financial Envelope at a level not materially different to the preceding period (taking into account cost and revenue inflation, and market conditions).
- 49.6 The NewCo Board shall recommend to the 21CF Board for approval the level of NewCo Trust Financial Envelope to be made by 21CF in the five-year period after the Initial Investment Period, taking into account cost and revenue inflation, and market conditions.
- 49.7 If 21CF does not intend to accept the NewCo Board's recommendation, 21CF shall inform the NewCo Board promptly, explaining its reasons. If, following receipt by the NewCo Board of the 21CF explanation contemplated in this section [14.3], the NewCo Board does not intend to amend its recommendation, the NewCo Board shall refer the matter to arbitration for final determination, in accordance with the provisions of **Annex 5**.
- 49.8 For the avoidance of doubt, payment of the NewCo Trust Financial Envelope shall replace payment of the NewCo 21CF Financial Envelope contemplated by section 5.2, which shall cease to have effect.
- 49.9 The articles of association of Trustco shall require Trustco to procure that NewCo will maintain financial records showing the annual NewCo Trust Financial Envelope by 21CF (the **NewCo Trust Investment Report**). The NewCo Trust Investment Report shall be certified by an independent auditor, with a copy provided to [the Secretary of State/Ofcom/CMA].
- 49.10 Sections [3, 9, 10, 11, 12, 13 and 16] of these undertakings shall continue to have effect until the Trustco Transfer, as if references to the Divestiture Date, and the reference in section [9.8] to "*all of the operational agreements detailed in section [8.1] above becom[ing] effective*" were references to the Trustco Transfer.

## **50. PROVISION OF INFORMATION**

- 50.1 21CF shall furnish promptly to [the Secretary of State/CMA/Ofcom] such information as [the Secretary of State/CMA/Ofcom] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## **51. INTERPRETATION**

- 51.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 51.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 51.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 51.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**Brand Licensing Agreement**” has the meaning set out in section [15.4 above];

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means:

- (a) if the Transaction is effected by way of a takeover offer (as that term is defined in section 974 of the Companies Act), the date on which such takeover offer becomes or is declared unconditional in all respects; or
- (b) if the Transaction is effected by way of a scheme of arrangement, the date on which the Court sanctions the scheme of arrangement;

“**CMA**” means the Competition and Markets Authority;

“**Control**” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 40 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 40 per cent or more of the total number of votes which may be cast at such meetings;

“**CPI**” means the consumer prices index, as published from time to time by the Office for National Statistics;

“**Disney**” means The Walt Disney Company or an Affiliate of The Walt Disney Company;

“**Divestiture Agreement**” has the meaning set out in section [39 above];

“**Divestiture Date**” has the meaning set out in section [39(a) above];

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at [9.1] above;

“**EPG**” means Electronic Programme Guide;

“**EPG Services Agreement**” has the meaning set out in section [16.1(iv)(A)] above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Head of Sky News**” means the individual responsible for setting commercial strategy and operating within the NewCo Financial Envelope, and setting editorial strategy and direction for Sky News’ digital, television and radio output, including holding the ultimate responsibility for the appointment and dismissal of Sky News employees (including presenters);

“**Independent Director**” means a member of the NewCo board of directors who:

- has not been an employee of 21CF, News Corp, any member of the Murdoch Family, or any member of the same Group of Interconnected Bodies Corporate as 21CF (excluding NewCo and Disney) or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the NewCo board, a material business relationship with 21CF, News Corp or any member of the Murdoch Family, either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board). For these purposes, employees of Disney and staff employed within Sky News shall not be deemed to have any such material business relationship unless they are members of the Murdoch Family or were employed by 21CF (other than within the Sky News business) or News Corp within the last three years;
- has not received and does not receive additional remuneration from 21CF, News Corp or any member of the Murdoch Family, apart from a director's fee, does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of NewCo's, 21CF's or News Corp's pension scheme;
- does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees or with any member of the Murdoch Family;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies or with any member of the Murdoch Family;
- does not represent a significant 21CF or News Corp shareholder or any member of the Murdoch Family; and
- has not served on the board of 21CF, News Corp, any company controlled by any member of the Murdoch Family or any company on whose board any member of the Murdoch Family has served within nine years from the date of their first appointment;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Key Sky News Editorial Staff”** means the Head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News;

**“MFT”** means the Murdoch Family Trust;

**“Monitoring Trustee”** means the person appointed pursuant to section [17] above to carry out the Monitoring Trustee Functions;

**“Monitoring Trustee Functions”** means the functions set out in section [18] above;

**“Murdoch Family”** means Rupert Murdoch, Lachlan Murdoch and James Murdoch;

**“NewCo”** means the private limited company (including, where relevant, any wholly-owned subsidiary of such private limited company) into which the business of Sky News will be transferred and which will continue to operate that business, as described in section [10.1] above;

**“NewCo Board”** means the board of directors of NewCo;

“**NewCo 21CF Financial Envelope**” has the meaning set out in section [37.2] above;

“**NewCo Disney Financial Envelope**” has the meaning set out in section [37.1] above;

“**NewCo Financial Envelope**” means, together, the NewCo 21CF Financial Envelope and the NewCo Disney Financial Envelope;

“**NewCo Trust Financial Envelope**” has the meaning set out in section [49.5] above;

“**NewCo Trust Investment Report**” has the meaning set out in section [49.9] above;

“**News Corp**” means News Corporation;

“**Ofcom**” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

“**Operational Net Investment**” means the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

“**Order**” means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

“**Secretary of State**” means Secretary of State for Digital, Culture, Media and Sport;

“**Sky**” means Sky plc;

“**Sky News**” means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business which will remain under the sole control of Sky;

“**Sky News Business Transfer**” has the meaning set out in section [15.1] above;

“**Sky News Editorial Guidelines**” has the meaning given to it in section [13.1] above;

“**Sky UK**” means Sky UK Limited or any successor company that holds the licence for the Sky News service;

“**Subsidiary**” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“**Transaction**” means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own;

“**Trustco**” has the meaning given to it in section [49.1(ii)] above;

“**Trustco Transfer**” has the meaning given to it in section [49.3] above; and

“**Working Day**” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

**ANNEX 1**

**ARTICLES OF ASSOCIATION OF NEWCO**

**THE COMPANIES ACT 2006**

**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of  
[SKY NEWS] LIMITED**

**(Adopted by Special Resolution passed on [●])**

**No. [●]**



## INDEX TO THE ARTICLES

Article	Page
PRELIMINARY	
1. Model articles do not apply .....	21
INTERPRETATION	
2. Defined terms .....	21
OBJECTS	
3. Object .....	24
4. Unrestricted objects.....	25
LIMITED LIABILITY	
5. Liability of members .....	25
DIRECTORS	
DIRECTORS' GENERAL POWERS, DUTIES AND RESPONSIBILITIES	
6. Directors' general powers .....	25
7. Directors' duties.....	25
8. Directors may delegate.....	25
9. Committees.....	26
DECISION-MAKING BY DIRECTORS	
10. Directors to take decisions collectively.....	26
11. Unanimous decisions.....	26
12. Calling a directors' meeting.....	26
13. Participation in directors' meetings .....	27
14. Quorum for directors' meetings.....	27
15. Chairing of directors' meetings.....	27
DIRECTORS' INTERESTS	
16. Directors' interests in relation to transactions or arrangements with the company .....	28
17. Directors' interests other than in relation to transactions or arrangements with the company .....	28
18. Directors' interests generally and voting .....	29
19. Records of decisions to be kept.....	30
20. Directors' discretion to make further rules .....	30
APPOINTMENT OF DIRECTORS	
21. Number of directors; composition of board of directors and committees .....	31
22. Initial directors; methods of appointing and removing directors .....	31
23. Termination of director's appointment .....	31
24. Directors' services and remuneration .....	32
25. Directors' expenses.....	32
26. Directors' pensions and other benefits.....	32
SKY NEWS AND SKY NEWS EDITORIAL GUIDELINES	
27. Sky News.....	33
28. Sky News Editorial Guidelines .....	33
SHARES AND DISTRIBUTIONS – SHARES	
29. All shares to be fully paid up.....	33
30. Powers to allot shares.....	34
31. Company not bound by less than absolute interests.....	34
32. Share certificates .....	34
33. Replacement share certificates .....	35
34. Share transfers.....	35
35. Transmission of shares.....	35
36. Exercise of transmitters' rights.....	36

37.	Transmittees bound by prior notices .....	36
DIVIDENDS AND OTHER DISTRIBUTIONS		
38.	Procedure for declaring dividends.....	36
39.	Payment of dividends and other distributions .....	37
40.	No interest on distributions .....	37
41.	Unclaimed distributions .....	37
42.	Non-cash distributions.....	38
43.	Waiver of distributions.....	38
SHARE BUYBACKS		
44.	Buybacks out of capital .....	38
CAPITALISATION OF PROFITS		
45.	Authority to capitalise and appropriation of capitalised sums .....	38
DECISION-MAKING BY SHAREHOLDERS – ORGANISATION OF GENERAL MEETINGS		
46.	Notice of general meeting .....	39
47.	Attendance and speaking at general meetings.....	39
48.	Quorum for general meetings.....	40
49.	Chairing general meetings.....	40
50.	Attendance and speaking by directors and non-shareholders.....	40
51.	Adjournment.....	40
VOTING AT GENERAL MEETINGS		
52.	Voting: general.....	41
53.	Errors and disputes .....	41
54.	Poll votes .....	41
55.	Content of proxy notices .....	42
56.	Delivery of proxy notices etc. ....	42
57.	Amendments to resolutions.....	43
ADMINISTRATIVE ARRANGEMENTS		
58.	Means of communication to be used.....	43
59.	When a communication from the company is deemed received.....	43
60.	Notices in writing given to the company by majority shareholders .....	44
61.	Company seals.....	44
62.	No right to inspect accounts and other records .....	44
63.	Provision for employees on cessation of business .....	45
WINDING UP		
64.	Winding up.....	45
DIRECTORS' INDEMNITY AND INSURANCE		
65.	Indemnity .....	45
66.	Insurance .....	46

Company number  
[●]

THE COMPANIES ACT 2006  
A PRIVATE COMPANY LIMITED BY SHARES  
**ARTICLES OF ASSOCIATION**  
**OF**  
**[SKY NEWS] LIMITED**

*[(adopted by special resolution  
passed on [●])]*

**PRELIMINARY**

**76. Model articles do not apply**

None of the articles in the model articles for a private company limited by shares set out in Schedule 1 to The Companies (Model Articles) Regulations 2008 shall apply to the company.

**INTERPRETATION**

**77. Defined terms**

(a) In the articles, unless the context requires otherwise:

**21CF** means 21st Century Fox, Inc;

**21CF Board** means the board of directors of 21CF;

**articles** means the company's articles of association, as from time to time amended;

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**chairman** has the meaning given in article 14;

**chairman of the meeting** has the meaning given in article 58;

**CMA** means the Competition and Markets Authority;

**Companies Act** means the Companies Act 2006 including any statutory modification or re-enactment of it for the time being in force;

**company** means [Sky News Limited] (registered number [●]);

**director** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**Disney** means The Walt Disney Company or an affiliate of The Walt Disney Company;

**distribution recipient** has the meaning given in article 48;

**document** includes, unless otherwise specified, any document sent or supplied in electronic form;

**electronic form** has the meaning given in section 1168 of the Companies Act;

**eligible director** means a director who is entitled to vote on the relevant matter at a directors' meeting but excluding any director whose vote is not to be counted in respect of the relevant matter;

**fully paid** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**Group of Interconnected Bodies Corporate** has the meaning given in section 129(2) of the Enterprise Act 2002; and references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**hard copy form** has the meaning given in section 1168 of the Companies Act;

**Head of Sky News** means the individual responsible for setting commercial strategy and operating within the Newco Financial Envelope, and setting editorial strategy and direction for Sky News' digital, television and radio output, including holding the ultimate responsibility for the appointment and dismissal of Sky News employees (including presenters);

**holder** in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**Independent Director** means a member of the company's board of directors who:

- (a) has not been an employee of 21CF, News Corp, any member of the Murdoch Family or any member of the same Group of Interconnected Bodies Corporate as 21CF (excluding the company and Disney) or News Corp within the last five years;
- (b) does not have, and has not had within the last three years of the date of their first appointment to the company's board of directors, a material business relationship with 21CF, News Corp or any member of the Murdoch Family, either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board); For these purposes, employees of Disney and staff employed within Sky News shall not be deemed to have any such material business relationship unless they are members of the Murdoch Family or were employed by 21CF (other than within the Sky News business) or News Corp within the last three years;
- (c) has not received and does not receive additional remuneration from 21CF, News Corp or any member of the Murdoch Family, apart from a director's fee, does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of the company's, 21CF's or News Corp's pension scheme;
- (d) does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees or with any member of the Murdoch Family;

- (e) does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies or with any member of the Murdoch Family;
- (f) does not represent a significant 21CF or News Corp shareholder or any member of the Murdoch Family; and
- (g) has not served on the board of 21CF, News Corp, any company controlled by any member of the Murdoch Family or any company on whose board any member of the Murdoch Family has served within nine years from the date of their first appointment;

**instrument** means a document in hard copy form;

**Murdoch Family** means Rupert Murdoch, Lachlan Murdoch and James Murdoch;

**Newco Financial Envelope** has the meaning given in the Undertakings;

**News Corp** means News Corporation;

**Ofcom** means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

**Ofcom Broadcasting Code** means the broadcasting code published by Ofcom (as amended from time to time);

**Operational Agreements** means each of:

- (a) the brand licence agreement between [Sky] and the company dated [●];
- (b) the [lease] agreement between [Sky] and the company dated [●];
- (c) the electronic programme guide services agreement between [Sky] and the company dated [●];
- (d) the [satellite capacity agreement] between [Sky] and the company dated [●];
- (e) the [playout agreement] between [Sky] and the company dated [●],

in each case, as amended from time to time;

**ordinary resolution** has the meaning given in section 282 of the Companies Act;

**paid** means paid or credited as paid;

**participate**, in relation to a directors' meeting, has the meaning given in article 12;

**proxy notice** has the meaning given in article 64;

**relevant situation** has the meaning given in article 16;

**Secretary of State** means Secretary of State for Digital, Culture, Media and Sport;

**shareholder** means a person who is the holder of a share;

**shares** means shares in the company;

**Sky** means Sky [Limited (formerly Sky plc)];

**Sky Independent Director** means an independent director of Sky as at the date of adoption of these articles;

**Sky News** means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast television news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK Limited and received primarily in the United Kingdom and related services under the Sky News brand (including digital and radio services) and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises;

**special resolution** has the meaning given in section 283 of the Companies Act;

**subsidiary** has the meaning given in section 1159 of the Companies Act;

**transmittee** means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

**Undertakings** means the undertakings dated [●] given by 21CF pursuant to paragraph 3 of schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003; and

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- (b) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act as in force on the date when these articles become binding on the company.
- (c) Unless the contrary intention appears, words importing the singular number include the plural number and vice versa, words importing one gender include all genders and words importing persons include bodies corporate and unincorporated associations.
- (d) Headings to the articles are inserted for convenience only and shall not affect construction.
- (e) The Interpretation Act 1978 shall apply to these articles as it does to Acts of Parliament.
- (f) References in these articles to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- (g) In these articles the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

## **OBJECTS**

### **78. Object**

The object of the company is to maintain a Sky-branded news service received primarily in the UK which will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code.

**79. Unrestricted objects**

Nothing in the articles shall constitute a restriction on the objects of the company to do (or omit to do) any act and in accordance with section 31(1) of the Companies Act, the company's objects are unrestricted.

**LIMITED LIABILITY**

**80. Liability of members**

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

**DIRECTORS**

**DIRECTORS' GENERAL POWERS, DUTIES AND RESPONSIBILITIES**

**81. Directors' general powers**

Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

**82. Directors' duties**

(a) The purpose of the company:

- (i) may, if and to the extent that the directors consider it appropriate; and
- (ii) shall, if directed by the holders of the majority of the shares by notice in writing to the company,

include promoting the success of the group as a whole or of any one or more members of the group (and in this context **group** means the company, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company).

(b) In the exercise of his duties, a director shall not be restricted by any duty of confidentiality to the company from providing information regarding the company to a holding company of the company but a director who is also a director of any holding company of the company shall owe a strict duty of confidentiality to that holding company in relation to confidential information of the holding company.

**83. Directors may delegate**

(a) Subject to the articles (including article 20(b)), the directors may delegate any of the powers which are conferred on them under the articles:

- (i) to such person or committee;
- (ii) by such means (including by power of attorney);
- (iii) to such an extent;
- (iv) in relation to such matters or territories; and
- (v) on such terms and conditions,

as they think fit.

- (b) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (c) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

#### **84. Committees**

- (a) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- (b) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

### **DECISION-MAKING BY DIRECTORS**

#### **85. Directors to take decisions collectively**

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 10.

#### **86. Unanimous decisions**

- (a) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.
- (b) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (c) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

#### **87. Calling a directors' meeting**

- (a) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- (b) Notice of any directors' meeting must indicate:
  - (i) its proposed date and time;
  - (ii) where it is to take place; and
  - (iii) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- (c) Notice of a directors' meeting must be given to each director, but need not be in writing.
- (d) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.



## **88. Participation in directors' meetings**

- (a) Subject to the articles, directors **participate** in a directors' meeting, or part of a directors' meeting, when:
  - (i) the meeting has been called and takes place in accordance with the articles; and
  - (ii) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (b) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- (c) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is. In the absence of such a decision, the meeting is deemed to take place at the location from where the chairman participates.

## **89. Quorum for directors' meetings**

- (a) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (b) Subject to paragraphs (c) and 13(d), the quorum for directors' meetings is two eligible directors.
- (c) For the purpose of any directors' meeting (or part of a meeting) held in accordance with article 16 to authorise a director's conflict of interest, if only one eligible director is in office, the quorum is one eligible director.
- (d) For the purpose of any directors' meeting (or part of a meeting) at which the business of the meeting involves the consideration of editorial or journalistic matters, the quorum must include a director with senior editorial and/or journalistic expertise.
- (e) If the total number of directors for the time being in office is less than the quorum required, the director or directors in office must not take any decision other than a decision to appoint further directors in accordance with these articles.

## **90. Chairing of directors' meetings**

- (a) The directors must appoint a director with senior editorial and/or journalistic experience to chair their meetings.
- (b) The person so appointed for the time being is known as the **chairman**.
- (c) The directors may terminate the chairman's appointment at any time.
- (d) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors may appoint one of themselves to chair it (provided that the proposed chairman is a director with senior editorial and/or journalistic experience), failing which they shall adjourn the directors' meeting and either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors.

## **DIRECTORS' INTERESTS**

**91. Directors' interests in relation to transactions or arrangements with the company**

The relevant provisions of the Companies Act (including without limitation sections 177 and 182 of the Companies Act) shall apply in relation to declarations of interests in proposed and existing transactions or arrangements with the company.

**92. Directors' interests other than in relation to transactions or arrangements with the company**

(a) If a situation (a **relevant situation**) arises in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (including, without limitation, in relation to the exploitation of any property, information or opportunity, whether or not the company could take advantage of it but excluding any situation which cannot reasonably be regarded as likely to give rise to a conflict of interest) the following provisions shall apply if the conflict of interest does not arise in relation to a transaction or arrangement with the company:

(i) if the relevant situation arises from the appointment or proposed appointment of a person as a director of the company:

(A) the directors (other than the director, and any other director with a similar interest, who shall not be counted in the quorum at the meeting and shall not vote on the resolution); or

(B) the shareholders (by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares),

may resolve to authorise the appointment of the director and the relevant situation on such terms as they may determine;

(ii) if the relevant situation arises in circumstances other than in paragraph (i):

(A) the directors (other than the director and any other director with a similar interest who shall not be counted in the quorum at the meeting and shall not vote on the resolution); or

(B) the shareholders (by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares),

may resolve to authorise the relevant situation and the continuing performance by the director of his duties on such terms as they may determine.

(b) Any reference in paragraph (a) to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

(c) Any terms determined by the directors or the shareholders under paragraphs (a)(i) or (a)(ii) may be imposed at the time of the authorisation or may be imposed or varied subsequently by either the directors or the shareholders and may include (without limitation):

(i) whether the interested directors may vote (and be counted in the quorum at any meeting) in relation to any decision relating to the relevant situation;

(ii) the exclusion of the interested directors from all information and discussion by the company of the relevant situation; and

- (iii) (without prejudice to the general obligations of confidentiality) the application to the interested directors of a strict duty of confidentiality to the company for any confidential information of the company in relation to the relevant situation.
- (d) Any authorisation given under paragraphs (a)(i) or (a)(ii) may be withdrawn by either the directors or the shareholders by giving notice to the director concerned.
- (e) An interested director must act in accordance with any terms determined by the directors or the shareholders under paragraphs (a)(i) or (a)(ii).
- (f) Except as specified in paragraph (a), any proposal made to the directors and any authorisation by the directors in relation to a relevant situation shall be dealt with in the same way as any other matter may be proposed to and decided by the directors in accordance with the articles.
- (g) Any authorisation of a relevant situation given by the directors or the shareholders under paragraph (a) may provide that, where the interested director obtains (other than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose it to the company or to use it in relation to the company's affairs in circumstances where to do so would amount to a breach of that confidence.
- (h)
  - (i) If the directors make an authorisation under paragraph (a), impose or vary the terms of an authorisation under paragraph (c), or withdraw an authorisation under paragraph (d), they shall, as soon as reasonably practicable, notify the shareholders of this fact and provide, where applicable, any relevant particulars regarding the authorisation or its terms.
  - (ii) If the shareholders make an authorisation under paragraph (a), impose or vary the terms of an authorisation under paragraph (c), or withdraw an authorisation under paragraph (d), they shall, as soon as reasonably practicable, notify the directors of this fact and provide, where applicable, any relevant particulars regarding the authorisation or its terms.
- (i)
  - (i) A director shall, as soon as reasonably practicable, declare the nature and extent of his interest in a relevant situation within paragraph (a)(i) or (a)(ii) to the other directors and the shareholders.  
  
Failure to comply with this requirement does not affect the underlying duty to make the declaration of interest.
  - (ii) If a declaration of interest in relation to a relevant situation proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

### **93. Directors' interests generally and voting**

- (a) Subject to the Companies Act and to articles 15, 16, 20 and 21, a director notwithstanding his office:
  - (i) may be a party to, or otherwise interested or participate in, any transaction or arrangement with the company or in which the company is otherwise interested, including any such pensions, other benefits, transactions or arrangements as are referred to in article 27;
  - (ii) may act by himself or his firm in a professional capacity for the company (except as auditor) and he or his firm shall be entitled to remuneration as if he were not a director;

- (iii) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and
  - (iv) shall not, by reason of his office (or of the fiduciary relationship established by holding that office), be accountable to the company for any remuneration, profit or other benefit resulting from any relevant situation authorised under article 16 or any interest permitted under paragraphs (a)(i), (a)(ii), or (a)(iii), and no contract, transaction or arrangement shall be liable to be avoided on the grounds of any director having an interest authorised under article 16 or permitted under paragraphs (a)(i), (a)(ii), or (a)(iii).
- (b) Subject to articles 15 and 16, a director shall be entitled to vote on any decision concerning any matter in which he has, directly or indirectly, an interest or a duty.
  - (c) In the case of an alternate director, an interest of his appointor shall be treated as an interest of the alternate in addition to any interest which the alternate otherwise has.
  - (d) Subject to the Companies Act, the company may, by ordinary resolution or by notice in writing given to the company by the holders of a majority of the shares, suspend or relax the provisions of this article to any extent or ratify any contract, transaction or arrangement not duly authorised by reason of a contravention of this article.
  - (e) Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the company or any body corporate in which the company is interested, the proposals may be divided and considered in relation to each director separately and (provided he is not otherwise precluded from voting) each of the directors concerned shall be entitled to vote (and to form part of the quorum) in respect of each proposal except that concerning his own appointment.
  - (f) Subject to paragraph (g), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting and quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
  - (g) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting and quorum purposes.

#### **94. Records of decisions to be kept**

The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

#### **95. Directors' discretion to make further rules**

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## APPOINTMENT OF DIRECTORS

### 96. Number of directors; composition of board of directors and committees

- (a) The company's board of directors shall comprise solely directors who are Independent Directors and consist of [a minimum of] five [and a maximum of seven] directors. At least one director must have senior editorial and/or journalistic experience.
- (b) The company's board of directors and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the company and its business to enable the directors to discharge their respective duties and responsibilities effectively.

### 97. Initial directors; methods of appointing and removing directors

- (a) With effect from the date of adoption of these articles, the company's board of directors comprises:
  - (i) [three] Sky Independent Directors (the **Initial Sky Independent Directors**); and
  - (ii) [two] other directors nominated for appointment by the Initial Sky Independent Directors,(together, the **Initial Directors**) each of whom meets the criteria of an Independent Director.
- (b) Subject to article 20 and the remainder of this article 21, any person who is willing to act as a director, who meets the criteria of an Independent Director and who is permitted by law and these articles to do so, may be appointed to be a director by a decision of the directors.
- (c) Subject to articles 20 and 21(d), upon a director (including an Initial Director) resigning, retiring or otherwise ceasing to be a director, the remaining directors in office at such date shall nominate and appoint one or more new directors, subject to and in accordance with the provisions of these articles, if necessary to maintain at least the minimum number of directors stated in article 20(a).

### 98. Termination of director's appointment

A person ceases to be a director as soon as:

- (a) that person ceases to be an Independent Director;
- (b) that person ceases to be a director by virtue of any provision of the Companies Act or is prohibited from being a director by law;
- (c) a bankruptcy order is made against that person;
- (d) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (e) a registered medical practitioner who has examined him gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

**99. Directors' services and remuneration**

- (a) Directors may undertake any services for the company that the directors decide and the company may enter into a contract of service with any director on such terms as the directors think fit.
- (b) Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of contract of service between the director and the company.
- (c) Directors are entitled to such remuneration as the directors determine:
  - (i) for their services to the company as directors; and
  - (ii) for any other service which they undertake for the company.
- (d) Subject to the articles, a director's remuneration may take any form.
- (e) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

**100. Directors' expenses**

The company may pay any reasonable expenses which the directors, alternate directors and the company secretary (if any) properly incur in connection with their attendance at:

- (a) meetings of directors or committees of directors;
  - (b) general meetings; or
  - (c) separate meetings of the holders of any class of shares or of debentures of the company,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**101. Directors' pensions and other benefits**

The directors may exercise all the powers of the company to:

- (a) pay, provide, arrange or procure the grant of pensions or other retirement benefits, death, disability or sickness benefits, health, accident and other insurances or other such benefits, allowances, gratuities or insurances, including in relation to the termination of employment, to or for the benefit of any person who is or has been at any time a director of the company or in the employment or service of the company or of any body corporate which is or was associated with the company or of the predecessors in business of the company or any such associated body corporate, or the relatives or dependants of any such person. For that purpose, the directors may procure the establishment and maintenance of, or participation in, or contribution to, any pension fund, scheme or arrangement and the payment of any insurance premiums;
- (b) establish, maintain, adopt and enable participation in any profit sharing or incentive scheme including shares, share options or cash or any similar schemes for the benefit of any director or employee of the company or of any associated body corporate, and to lend money to any such director or employee or to trustees on their behalf to enable any such schemes to be established, maintained or adopted; and

- (c) support and subscribe to any institution or association which may be for the benefit of the company or associated body corporate or any directors or employees of the company or associated body corporate or their relatives or dependants or connected with any town or place where the company or an associated body corporate carries on business, and to support and subscribe to any charitable or public object whatsoever.

#### **SKY NEWS AND SKY NEWS EDITORIAL GUIDELINES**

##### **102. Sky News**

The company's Sky News services shall abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code.

##### **103. Sky News Editorial Guidelines**

- (a) The company shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the date of the adoption of these articles, as modified in accordance with article 33(c) (the **Sky News Editorial Guidelines**).
- (b) Save as amended in accordance with article 33(c), the Sky News Editorial Guidelines must specify that:
  - (i) the Head of Sky News retains complete operational (including setting commercial strategy and operating within the Newco Financial Envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News;
  - (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
  - (iii) in the event that any member of Sky News' staff becomes aware of an attempt by any employee, officer or director of 21CF or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News under article 33(b)(i), he or she will report such matters to the Head of Sky News.
- (c) The company may not make any amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom/CMA].

#### **SHARES AND DISTRIBUTIONS – SHARES**

##### **104. All shares to be fully paid up**

- (a) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- (b) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

#### **105. Powers to allot shares**

- (a) The directors may only exercise any power of the company to allot shares or to grant rights to subscribe for or convert any security into shares with such rights and restrictions with the prior written consent of all the shareholders from time to time. The powers of the directors under section 550 of the Companies Act 2006 are limited accordingly.
- (b) Subject to the articles, but without prejudice to paragraph (a) or to the rights attached to any existing share, the company may issue further classes of shares with such rights or restrictions as may be determined by ordinary resolution.
- (c) Sections 561 and 562 of the Companies Act are excluded.
- (d) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.
- (e) In the event that rights and restrictions attaching to shares are determined by ordinary resolution or by the directors pursuant to this article, those rights and restrictions shall apply, in particular in place of any rights or restrictions that would otherwise apply by virtue of the Companies Act in the absence of any provisions in the articles of a company, as if those rights and restrictions were set out in the articles.

#### **106. Company not bound by less than absolute interests**

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

#### **107. Share certificates**

- (a) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- (b) Every certificate must specify:
  - (i) in respect of how many shares, of what class, it is issued;
  - (ii) the nominal value of those shares;
  - (iii) that the shares are fully paid; and
  - (iv) any distinguishing numbers assigned to them.
- (c) No certificate may be issued in respect of shares of more than one class.
- (d) If more than one person holds a share, only one certificate may be issued in respect of it.
- (e) Certificates must:
  - (i) have affixed to them the company's common or official seal and in the case of an official seal, unless otherwise determined by the directors, the certificate does not need to be signed; or
  - (ii) be otherwise executed in accordance with the Companies Act.



#### **108. Replacement share certificates**

- (a) If a certificate issued in respect of a shareholder's shares is:
- (i) damaged or defaced; or
  - (ii) said to be lost, stolen or destroyed,
- that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- (b) A shareholder exercising the right to be issued with such a replacement certificate:
- (i) may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - (ii) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
  - (iii) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

#### **109. Share transfers**

- (a) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- (b) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (c) The company may retain any instrument of transfer which is registered.
- (d) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- (e) The directors may refuse to register the transfer of a share unless:
- (i) it is lodged at the registered office or at such place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
  - (ii) it is in respect of one class of shares only; and
  - (iii) it is in favour of not more than four transferees.

#### **110. Transmission of shares**

- (a) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- (b) A transmittee who produces such evidence of entitlement to shares as the directors may properly require:
- (i) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and

- (ii) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (c) But transmitters do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

#### **111. Exercise of transmitters' rights**

- (a) Transmitters who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (b) If the transmitter wishes to have a share transferred to another person, the transmitter must execute an instrument of transfer in respect of it.
- (c) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmitter has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

#### **112. Transmitters bound by prior notices**

If a notice is given to a shareholder in respect of shares and a transmitter (or a transferee nominated by such transmitter pursuant to article 45) is entitled to those shares, the transmitter (or transferee) is bound by the notice if it was given to the shareholder before the transmitter's (or transferee's) name has been entered in the register of members.

### **DIVIDENDS AND OTHER DISTRIBUTIONS**

#### **113. Procedure for declaring dividends**

- (a) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (b) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (c) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (d) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- (e) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- (f) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- (g) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

#### 114. Payment of dividends and other distributions

- (a) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- (i) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (ii) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (iii) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
  - (iv) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- (b) In the articles, the **distribution recipient** means, in respect of a share in respect of which a dividend or other sum is payable:
- (i) the holder of the share; or
  - (ii) if the share has two or more joint holders, whichever of them is named first in the register of members; or
  - (iii) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

#### 115. No interest on distributions

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- (a) the terms on which the share was issued; or
- (b) the provisions of another agreement between the holder of that share and the company.

#### 116. Unclaimed distributions

- (a) All dividends or other sums which are:
- (i) payable in respect of shares; and
  - (ii) unclaimed after having been declared or become payable,
- may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- (b) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
- (c) If:

- (i) twelve years have passed from the date on which a dividend or other sum became due for payment; and
- (ii) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

#### **117. Non-cash distributions**

- (a) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (b) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:
  - (i) fixing the value of any assets;
  - (ii) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (iii) vesting any assets in trustees.

#### **118. Waiver of distributions**

- (a) Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if:
  - (i) the share has more than one holder; or
  - (ii) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### **SHARE BUYBACKS**

#### **119. Buybacks out of capital**

The company may purchase its own shares in accordance with (and up to the maximum limits set out in) section 692(1ZA) of the Companies Act.

### **CAPITALISATION OF PROFITS**

#### **120. Authority to capitalise and appropriation of capitalised sums**

- (a) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
  - (i) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

- (ii) appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.
- (b) Capitalised sums must be applied:
  - (i) on behalf of the persons entitled; and
  - (ii) in the same proportions as a dividend would have been distributed to them.
- (c) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (d) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (e) Subject to the articles the directors may:
  - (i) apply capitalised sums in accordance with paragraphs (c) and (d) partly in one way and partly in another;
  - (ii) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - (iii) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## **DECISION-MAKING BY SHAREHOLDERS – ORGANISATION OF GENERAL MEETINGS**

### **121. Notice of general meeting**

A shareholder present either in person or by proxy, at any general meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which the meeting was convened.

### **122. Attendance and speaking at general meetings**

- (a) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (b) A person is able to exercise the right to vote at a general meeting when:
  - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

- (c) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (d) In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- (e) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **123. Quorum for general meetings**

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### **124. Chairing general meetings**

- (a) The chairman shall chair general meetings if present and willing to do so.
- (b) If the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
  - (i) the directors present; or
  - (ii) (if no directors are present), the meeting,

must appoint a director to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

- (c) The person chairing a meeting in accordance with this article is referred to as the **chairman of the meeting**.

### **125. Attendance and speaking by directors and non-shareholders**

- (a) Directors may attend and speak at general meetings, whether or not they are shareholders.
- (b) The chairman of the meeting may permit other persons who are not:
  - (i) shareholders of the company; or
  - (ii) otherwise entitled to exercise the rights of shareholders in relation to general meetings,to attend and speak at a general meeting.

### **126. Adjournment**

- (a) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- (b) The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
  - (i) the meeting consents to an adjournment; or

- (ii) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (c) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- (d) When adjourning a general meeting, the chairman of the meeting must:
  - (i) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
  - (ii) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (e) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
  - (i) to the same persons to whom notice of the company's general meetings is required to be given; and
  - (ii) containing the same information which such notice is required to contain.
- (f) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **VOTING AT GENERAL MEETINGS**

### **127. Voting: general**

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

### **128. Errors and disputes**

- (a) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- (b) Any such objection must be referred to the chairman of the meeting, whose decision is final.

### **129. Poll votes**

- (a) A poll on a resolution may be demanded:
  - (i) in advance of the general meeting where it is to be put to the vote; or
  - (ii) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (b) A poll may be demanded by:
  - (i) the chairman of the meeting;
  - (ii) the directors;

- (iii) two or more persons having the right to vote on the resolution; or
  - (iv) a person or persons representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (c) A demand for a poll may be withdrawn if:
- (i) the poll has not yet been taken; and
  - (ii) the chairman of the meeting consents to the withdrawal.
- (d) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **130. Content of proxy notices**

- (a) Proxies may only validly be appointed by a notice in writing (a **proxy notice**) which:
- (i) states the name and address of the shareholder appointing the proxy;
  - (ii) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
  - (iii) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (iv) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate.
- (b) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (d) Unless a proxy notice indicates otherwise, it must be treated as:
- (i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **131. Delivery of proxy notices etc.**

- (a) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (b) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (c) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.



- (d) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

### **132. Amendments to resolutions**

- (a) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
  - (i) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
  - (ii) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (b) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - (i) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - (ii) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (c) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## **ADMINISTRATIVE ARRANGEMENTS**

### **133. Means of communication to be used**

- (a) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
- (b) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- (c) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **134. When a communication from the company is deemed received**

- (a) Any document or information, if sent by first class post, shall be deemed to have been received on the day following that on which the envelope containing it is put into the post, or, if sent by second class post, shall be deemed to have been received on the second day following that on which the envelope containing it is put into the post and in proving that a document or information has been received it shall be sufficient to prove that the letter, envelope or wrapper containing the document or information was properly addressed, prepaid and put into the post.

- (b) Any document or information not sent by post but left at a registered address or address at which a document or information may be received shall be deemed to have been received on the day it was so left.
- (c) Any document or information, if sent or supplied by electronic means, shall be deemed to have been received on the day on which the document or information was sent or supplied by or on behalf of the company.
- (d) If the company receives a delivery failure notification following a communication by electronic means in accordance with paragraph (c), the company shall send or supply the document or information in hard copy or electronic form (but not by electronic means) to the shareholder either personally or by post addressed to the shareholder at his registered address or by leaving it at that address. This shall not affect when the document or information was deemed to be received in accordance with paragraph (c).
- (e) Every person who becomes entitled to a share shall be bound by every notice in respect of that share which before his name is entered in the register of members was given to the person from whom he derives his title to the share.

**135. Notices in writing given to the company by majority shareholders**

Any notice in writing given to the company by the holders of a majority of the shares shall take effect when it is lodged at the registered office or produced to any directors' meeting.

**136. Company seals**

- (a) Any common seal may only be used by the authority of the directors or of a committee of the directors.
- (b) The directors may decide by what means and in what form any common seal is to be used.
- (c) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- (d) For the purposes of this article, an authorised person is:
  - (i) any director of the company;
  - (ii) the company secretary (if any); or
  - (iii) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.
- (e) The company may exercise the powers conferred by the Companies Act with regard to having official seals and those powers shall be vested in the directors. Subject to the Companies Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, and affixed in such manner as the directors may from time to time determine.

**137. No right to inspect accounts and other records**

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

### **138. Provision for employees on cessation of business**

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

## **WINDING UP**

### **139. Winding up**

If the company is wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Companies Act, divide among the shareholders *in specie* the whole or any part of the assets of the company and may, for that purpose, value any assets and determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the shareholders as he with like sanction determines, but no shareholder shall be compelled to accept any assets upon which there is liability.

## **DIRECTORS' INDEMNITY AND INSURANCE**

### **140. Indemnity**

- (a) Subject to paragraph (e), a relevant director of the company or of an associated company may be indemnified out of the company's assets against:
  - (i) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;
  - (ii) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act);
  - (iii) any other liability incurred by that director as an officer of the company or an associated company.
- (b) The company may fund the expenditure of a relevant director of the company or of any associated company for the purposes permitted under the Companies Act and may do anything to enable such relevant director to avoid incurring such expenditure as provided in the Companies Act.
- (c) No relevant director of the company or of any associated company shall be accountable to the company or the shareholders for any benefit provided pursuant to this article and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the company.
- (d) The powers given by this article shall not limit any general powers of the company to grant indemnities, purchase and maintain insurance or provide funds (whether by way of loan or otherwise) to any person in connection with any legal or regulatory proceedings or applications for relief.
- (e) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Act or by any other provision of law.

- (f) In this article and in article 75:
  - (i) companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
  - (ii) a **relevant director** means any director or former director of the company or of an associated company.

**141. Insurance**

- (a) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.
- (b) In this article, a relevant loss means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company.

## ANNEX 2

### UPDATED SKY NEWS EDITORIAL GUIDELINES

[Section 2 only]

#### *2. Editorial independence of Sky News*

The Head of Sky News retains complete operational (including setting commercial strategy and operating within Sky News' financial envelope) and editorial control over all news and current affairs output, including, but not limited to, the selection, prominence and running of news stories and any political comment and opinion broadcast on the Sky News services, the programming mix of shows or TV formats broadcast on those services, the target demographics of the services and the presentation of the services, as well as to bring about changes to the editorial output of Sky News).

#### **Instructions to Sky News Editorial Staff**

Subject to general compliance procedures and oversight, instructions to Sky News editorial staff (including journalists) shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority. You should not take instructions on these matters from anyone else.

#### **Attempts to influence**

In the event that you become aware of an attempt by any employee, officer or director of the 21st Century Fox group or Sky outside the Sky News editorial function to influence matters within the authority of the Head of Sky News, you must report this immediately to the Head of Sky News.

**ANNEX 3**

**FORM OF DIVESTITURE AGREEMENT**



ANNEX 4

NEWCO TRUST FINANCIAL ENVELOPE

	FY 2016/17 £m	Further details
Revenues <sup>207</sup>	[X]	Includes: wholesale of Sky News channel [X]; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs <sup>208</sup>	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
Incremental costs expected to be incurred operating the Sky News business as a separate corporate entity	[●]	
<b>NewCo Trust Financial Envelope</b>	<b>[X]</b>	

<sup>207</sup> Does not include: Sky Media [X]% sales commission for provision of ad sales. For the avoidance of doubt, any payments to NewCo under the minimum guarantee provision of the advertising sales agreement under section 8.1(i) shall be counted as revenue.

<sup>208</sup> Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.

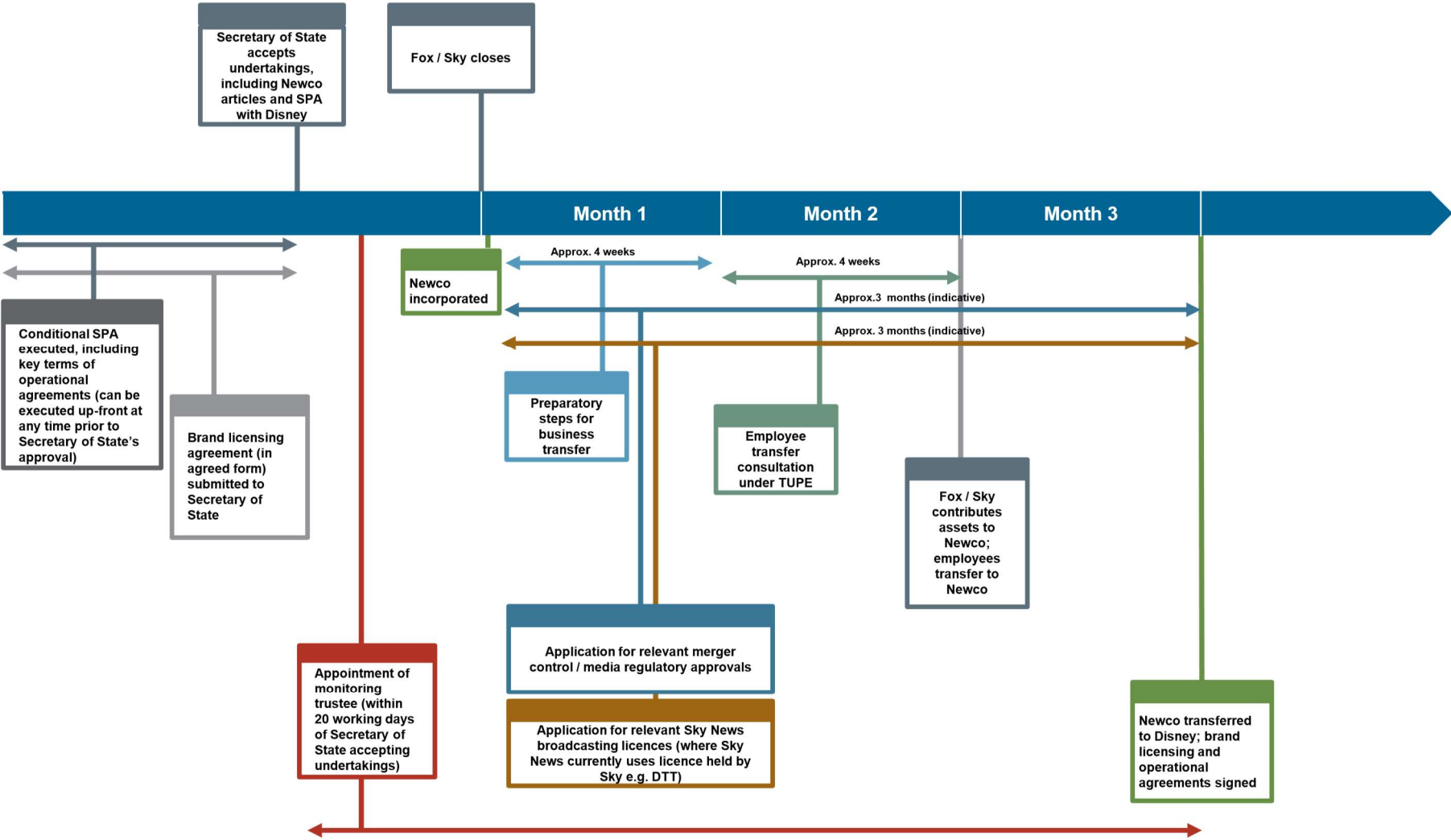
## ANNEX 5

### ARBITRATION OF DISAGREEMENTS BETWEEN 21CF AND THE NEWCO BOARD REGARDING INVESTMENT IN NEWCO

11. Any disagreement referred to arbitration pursuant to section 14.3 above as to the level of NewCo Trust Financial Envelope to be made by 21CF under section 49.5 above shall be finally resolved by baseball arbitration under the LCIA Arbitration Rules as amended from time to time (for the purpose of this annex, the **Rules**).
12. Capitalised terms used in this annex which are not otherwise defined in these undertakings shall have the meaning given to them in the Rules.
13. **Appointment of Arbitrator.** The number of arbitrators shall be one. 21CF and the NewCo Board (each a **Party**) shall jointly nominate the sole arbitrator for appointment by the LCIA Court. If 21CF and the NewCo Board fail to nominate an arbitrator within 10 business days of referring the matter for arbitration, the LCIA Court shall appoint an English-speaking arbitrator that has substantial experience of the UK media sector and of financial and/or accounting matters.
14. **Written Submissions.** Within twenty (20) days after the appointment of the arbitrator by the LCIA Court, each Party shall submit to the arbitrator a proposed level of NewCo Trust Financial Envelope to be made by 21CF under section 49.5 above, supported by written submissions, relevant factual (documentary) evidence and one expert report (the **Proposals**). Within fifteen (15) days after the delivery of the Proposals to the arbitrator, each Party may submit a written rebuttal of the other Party's Proposal (**Rebuttals**) and may also amend and re-submit its original Proposal.
15. **Hearing.** Unless otherwise agreed, the Parties and the arbitrator shall meet within fifteen (15) days after the Parties have submitted their Proposals (and Rebuttals, if any), at which time each Party shall have two (2) hours to argue in support of its Final Proposal, including any presentation by their appointed experts (the **Hearing**). The Parties shall not have the right to call any witnesses in support of their arguments, nor compel any production of documents or take any discovery from the other Party in preparation for the Hearing.
16. **Award.** Within thirty (30) days after the Hearing, the arbitrator shall select one of the final Proposals as the resolution of the Dispute, by reference to the factors for determining the level of NewCo Trust Financial Envelope identified in section 49.5 above. The arbitrator may not alter the terms of either final Proposal and may not resolve the Dispute in a manner other than by selection of one of the submitted final Proposals. If a Party fails to submit a Proposal within the initial twenty (20)-day time frame set forth above, the arbitrator shall select the Proposal of the other Party as the resolution of the Dispute.
17. The seat or legal place of arbitration shall be London.
18. The language used in the arbitral proceedings shall be English.
19. Notwithstanding any provision to the contrary in the Rules, 21CF and the NewCo Board shall agree that any arbitrator may have the same nationality as any party to the arbitration.
20. As at the Trustco Transfer, 21CF will enter into a binding arbitration agreement with NewCo to give effect to the provisions of this annex.



# Indicative Divestiture timeline and steps



Source: Fox.



## Appendix Q: Revised Firewall remedy assessment

1. This appendix sets out our detailed assessment of Fox's Revised Firewall remedy.
2. We first considered how the various aspects of Fox's Revised Firewall remedy might help constrain the influence of the MFT:
  - (a) **commitment to maintain a news service:** the purpose of the 'commitment to maintain a news service'<sup>209</sup> is to reduce Sky News' reliance on the rest of Sky and Fox for financial support. Post Transaction, absent any remedy, such reliance could provide a source of leverage for the MFT over Sky and Sky News through its control of Fox, and potentially incentivise Sky News to pursue particular editorial lines or agendas in order to ensure continued support and funding from its parent companies;
  - (b) **proposal to create a SNB:** following the Transaction, Sky will be a wholly owned subsidiary of Fox, controlled by the MFT. One consequence of this will be that, in addition to the removal of a layer of shareholder constraint, the current Sky board would no longer exist, thus removing a layer of independent reporting and corporate governance between the Fox board and the MFT, and Sky News. Fox's proposal to create a SNB may mitigate some of the significantly increased level of control the MFT will be able to exercise over Sky and Sky News through its control of Fox by reintroducing a layer of independent governance to increase the degree of separation between (i) the MFT and members of the Murdoch family and (ii) Sky News. The primary role of the SNB is to protect Sky News' editorial independence;
  - (c) **appointment and removal of the Head of Sky News:** a further area of potential influence post Transaction is in relation to the appointment and removal of the Head of Sky News. The Revised Firewall remedy seeks to mitigate this risk to some degree by giving the SNB the responsibility to approve the appointment or removal of the Head of Sky News, including the possibility of nominating a candidate for appointment to the role;
  - (d) **commitment not to influence the editorial choices made by the Head of Sky News:** the commitment that no employee or officer of Fox, or a member of the Fox board who is a trustee or beneficiary of the MFT, will

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<sup>209</sup> Section 2 of the Revised Firewall remedy (see Appendix N).

influence or attempt to influence the editorial choices made by the Head of Sky News,<sup>210</sup> seeks to address the concerns over members of the Murdoch family influencing the editorial agenda of Sky News post Transaction through the expression of views or otherwise. If the Head of Sky News is concerned that this part of the undertaking is not being adhered to, then he or she is expected to escalate concerns to the SNB (see section 4 of the Revised Firewall remedy).

(e) **commitment to maintain and observe the Sky News Editorial Guidelines:** the Revised Firewall remedy also provides for a commitment to maintain and observe the Sky News Editorial Guidelines.<sup>211</sup> This seeks to address the concerns regarding members of the Murdoch family influencing the editorial strategy of Sky News, such as the selection and running of news stories and any political comment and opinion broadcast on Sky News, by making it clear that this is the responsibility of the Head of Sky News.

3. We considered next what risks might be attached to behavioural commitments of this kind and more broadly to remedies of this type.

## Risks considered

4. The Merger Remedies Guidelines set out four forms of risk that the design of behavioural remedies should seek to avoid, enabling the measures to be as effective as possible:

(a) **specification risks:** these risks arise if the form of conduct required to address the substantive lessening of competition (SLC) or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance. The intended operation of the measure needs to be clear to the persons to whom it is directed, and other relevant parties, so that it is apparent what conduct constitutes compliance and what does not. For example, a commitment to permit access 'on fair and reasonable' terms may create significant specification risk as the provision may be insufficiently specific to allow effective enforcement;

(b) **circumvention risks:** as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted;

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<sup>210</sup> Fox response to Remedies Notice, paragraph 3.3 and section 3 of the Revised Firewall remedy.

<sup>211</sup> Section 4 of the Revised Firewall remedy (Appendix N).

- (c) **monitoring and enforcement risks:** even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. This may be due to a variety of causes, such as the volume and complexity of information required to monitor compliance; limitations in monitoring resources; asymmetry of information between the monitoring agency and the business concerned; and the long timescale of enforcement relative to a rapidly moving market;
- (d) **distortion risks:** these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs. Distortion risks may result from remedies overriding market signals or encouraging circumvention behaviour. For example, prohibiting the use of long term contracts may result in a lack of incentives to compete for new business.<sup>212</sup>
5. These risks are set out in the Merger Remedies Guidelines within the context of designing a behavioural remedy to address an SLC and/or its adverse effects. However, any remedy aimed at constraining any aspect of the behaviour of a commercial entity will need to be well specified and must not allow firms to circumvent its intention in order to be effective. Such a remedy would also need to be effectively monitored and enforced and would also require significant resources to be committed. If a remedy cannot be effectively monitored or enforced, then it is unlikely to achieve its goals or command confidence. Similarly, behavioural remedies which override commercial incentives always carry a risk of distorting behaviour or market outcomes. We therefore consider that these are relevant to assessing the risks of the Revised Firewall remedy.
6. We identified distortion risks as being the least material in relation to the Revised Firewall remedy, which did not seek to control market outcomes. We considered that each of the other three categories of risk are relevant to the circumstances of the present case.<sup>213</sup>
7. Below we set out our analysis against each of specification, circumvention and monitoring and enforcement risks.

### ***Specification risks***

8. The SNB has a critical role in the Revised Firewall remedy. However, as proposed it is unclear what type of board the SNB is attempting to replicate as

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<sup>212</sup> [Merger Remedies Guidelines](#), paragraph 4.2.

<sup>213</sup> Distortions may arise in attempting to mitigate all aforementioned risks – for example by tightening up enforcement of the remedy, or controlling a wider range of behaviour. However, such distortions would be the result of attempting to tackle the primary categories of risk.

it has no management function and only limited oversight of compliance with the proposed undertakings that accompany the Revised Firewall remedy, and consequently seems to be more advisory in nature.

9. We identified three main risks in terms of the specification of the SNB. These are:
  - (a) remit: the remit of the SNB is neither that of a management or general oversight board; it is both too passive to detect influence over editorial decisions, and too narrowly drawn to ensure compliance with all elements of the remedy;
  - (b) powers: the SNB has insufficient powers to protect against influence over subsequent appointments to the Head of Sky News, and no powers to compel Fox to take action against Fox and Sky employees or those with links to the MFT if it identifies any threats to editorial influence;
  - (c) composition: the composition of the SNB may not have the necessary independence, skills, experience, scale and/or capacity to carry out its functions effectively.

*Can the risk in regard to the SNB's remit be adequately mitigated?*

10. We identified two main risks in terms of the SNB's remit as proposed by Fox, as it has neither a management nor a general oversight function. These relate to the passive way in which the remit is specified and the narrow scope of the remit.
11. First, as currently specified, the SNB would not have a duty to ensure compliance with the Revised Firewall remedy or proactively investigate potential breaches. This creates a risk that breaches would not be detected or even if so, not actively followed up.
12. Subject to the challenges of monitoring and enforcement, we considered that the SNB could be empowered to carry out its functions more proactively by being given a duty to actively monitor, investigate and regularly report on matters concerning editorial independence, and whether it has encountered potential breaches of the commitment. The SNB would also need to be given sufficient resources to carry out this function.
13. Second, as specified, the SNB has a narrow remit, in that it only oversees a subset of the Revised Firewall remedy. For example, it does not have any oversight of the funding commitment. Given the central importance of the SNB to the overall remedy, this creates a risk that those aspects that are not under

the oversight of the SNB but are critical to the operation of Sky News, would not be subject to effective scrutiny.

14. In relation to risks flowing from the narrowness of its remit, as a potential mitigation we consider that the SNB could have its remit expanded. For example, the SNB could be given responsibility for monitoring the Revised Firewall remedy in its entirety, which would include matters such as oversight of Sky News funding, oversight of Sky News editorial and commercial strategies and oversight of the Head of Sky News.
15. However, expanding its remit in both of these ways may give rise to some further tensions and/or require additional mitigation:
  - (a) increasing its remit may make it more challenging for the SNB to carry out its functions effectively. For example, if the scope of the SNB were extended to include oversight of the sufficiency and reasonableness of the financial support provided by Fox to Sky News, we consider that the criteria for the assessment of financial support after five years are extremely general and open to interpretation and dispute. Similar difficulties could arise with respect to the size and apportionment of budgets and the terms under which shared services such as HR, IT and facilities were provided;
  - (b) in order for the SNB to assume an oversight role proactively would require measures to provide Fox, Sky and Sky News staff with sufficient incentives to report concerns about their employer or senior colleagues to a brand new board with a high degree of confidence that they would not be subsequently penalised for having done so; and
  - (c) the role as adapted would have similarities to that of monitoring trustees appointed by the CMA during investigation of mergers. However, an important difference is that the mandate of a monitoring trustee is normally limited to the duration of the investigation and/or the process of remedy implementation, whereas the SNB would need to be in place indefinitely. The permanent nature of such arrangements could erode independence over time.
16. In summary, we consider that risks arising from the narrow and reactive specification of the SNB's remit could in principle be mitigated to a degree. Sky News could be better insulated by expanding the SNB's remit and giving the SNB a duty to carry out its obligations proactively. However, as we have outlined above, expanding the remit creates further risks, in particular making it more challenging for the SNB to carry out its functions effectively. Whatever the remit of the SNB, Sky News employees will face an ongoing conflict of

incentives between commercial and career objectives on the one hand and their duty in relation to the SNB on the other hand.

*Can the risk in regard to the SNB's lack of powers be adequately mitigated?*

17. We identified two main risks in terms of the specification of the SNB's powers. These relate to the process for the appointment of the Head of Sky News and the absence of the SNB's ability to require Fox and the MFT to take action. We consider each in turn.
18. First, Fox and the MFT will retain substantial influence over the appointment process to appoint a new Head of Sky News under the Revised Firewall remedy, subject to a potential veto by the SNB. The SNB has the power to approve (or reject) candidates for the role of Head of Sky News and to nominate a candidate for consideration. However, it would not run the process for appointment of the Head of Sky News, which would be overseen by Fox, and would therefore not input into decision making. For example, the specification criteria for the post or the shortlisting of potential candidates, other than the candidate it may nominate.
19. This process would leave Fox in a powerful position to secure a candidate of its choice. For example, following the rejection of one candidate put forward by Fox for appointment, our understanding is that an alternative candidate could be put forward by Fox instead. In addition, the SNB would appear to be powerless to intervene if it considered that the Head of Sky News had been pressurised or induced to resign.
20. The respective roles of Fox and the SNB in relation to this critical appointment appear to us to give Fox a very high degree of influence over the identity of the successful candidate, which creates a very clear channel of influence for the MFT. This appears to us to represent a material risk to the effectiveness of the remedy.
21. To mitigate this risk – and leaving to one side, whether the members of the SNB would have the capabilities to carry out this function effectively - the SNB could be charged with appointing and removing the Head of Sky News and remove Fox from having any role in the process. This would potentially mitigate the risk with regard to the appointment of the Head of Sky News.
22. Our second concern with regard to the power of the SNB relates to its ability to compel Fox or the MFT to take any action to address non-compliance. It is unclear from the Revised Firewall remedy what power, if any, the SNB has or could be given to compel the Fox board to act upon any evidence of non-



compliance that it presented to them or that would act as a deterrent to the MFT to testing the boundary of the remedy.

23. To mitigate this concern the Fox board could be required to undertake that any cases of editorial influence uncovered by the SNB, if exerted by a Fox, Sky or Sky News employee, would be treated as a serious disciplinary matter and, as with failure to abide by the Sky News Editorial Guidelines on reporting attempts at influence, render the individual concerned liable to summary dismissal. Further, in circumstances where the SNB was not satisfied with the response of the Fox board to its findings, it could be required to draw the incident to the attention of the Secretary of State (and/or other relevant authorities, such as the CMA or Ofcom) as a potential breach of the remedy.
24. However, this still raises the following concerns:
  - (a) the threat of dismissal would not be available in the case of attempts at editorial influence by those who were not Fox, Sky or Sky News employees but who nonetheless might seek to influence Sky News editorially. This would include individuals who were members of or connected to the MFT or who were non-executive directors of Fox. It is also unclear what sanctions would be taken against members of the Murdoch family in the event of a breach; and
  - (b) there is a difficulty of specifying a bright line between attempts to influence editorial behaviour and other legitimate interactions. This gives rise to material circumvention, monitoring and enforcement risks which we consider later (see paragraphs 36 to 48).
25. More broadly, even if assurances could be given over the sanctions that the SNB would impose, the fact that the SNB is not equivalent to a company board, the integrated relationship between Sky and Sky News at present, and the difficulty in drawing a bright line between editorial and commercial or strategic matters, poses fundamental challenges to expanding the remit and powers of the SNB. It also increases the difficulty in identifying and attracting appropriate candidates to sit on the SNB.
26. In summary, leaving to one side the desirability of doing so, we consider that the SNB could be given greater powers to protect against influence over appointments to the Head of Sky News. However, it is not clear what powers it could be given to compel Fox or the MFT to take action if any threats to editorial influence were identified. Moreover, as noted, the context of the remedy with Sky News being integrated within Sky imposes some inherent limits on the ability of the SNB to constrain the behaviour of the MFT or Fox.

*Can the risk in regard to the composition of the SNB be adequately mitigated?*

27. The SNB may not have the capabilities and/or independence necessary to fulfil its functions.
28. It is proposed, at least initially, that the SNB will comprise three individuals: two individuals who are independent directors of Sky pre Transaction and a third individual with senior editorial and/or journalistic experience to act as Chairman, nominated by the Sky independent directors. Subsequently it would comprise members selected by the NCGC of the Fox board and approved by the Secretary of State as meeting the criteria of an Independent Expert Board.<sup>214</sup>
29. Under the proposals, Fox will retain considerable influence over the composition of subsequent iterations of the SNB as the NCGC of the Fox board will be responsible for selecting subsequent candidates. This creates the risk that over time, the SNB may become less independent from the MFT. At the very least there will be limited transparency over subsequent appointments to the SNB. We considered that this risk can be mitigated to some degree by requiring the NCGC to make public its decision as to how the successful candidate meets the criteria for being independent, though this will not remove entirely the scope for influence by the MFT.
30. Further composition challenges arise because the task of assessing the validity of allegations of editorial influence is by no means straightforward. It will be extremely difficult to define what precisely constitutes an 'attempt to influence editorial choices', particularly given the ongoing commercial, managerial and financial connections that would exist between Fox, Sky and Sky News post Transaction (see 'Dependency of Sky News on its parent company' in remedies section of the report). Getting to the bottom of specific allegations is also unlikely to be straightforward.
31. Accordingly, while it would be imperative for members of the SNB to have senior editorial or journalistic experience in order to evaluate competing claims, there may be other professional skills – for example the ability to forensically gather and assess evidence about potential breaches – that could be required when conducting such examinations. In the event that the SNB were to be given responsibility for the oversight of the budgetary elements of the proposals, the availability of complementary professional skills would also be essential.

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<sup>214</sup> We do not consider that it would be appropriate for the Secretary of State to have a role in the appointment of board members or other personnel of a private company.

32. The size and composition of the SNB as well as the resources available to it needs to be commensurate with the task it is set. We consider that it could have a different composition – for example, it could, if its role were expanded, be increased in size and include individuals with commercial/financial expertise with experience of remedies monitoring, notwithstanding the increased commitment this would require from any SNB members
33. While a risk exists in relation to the proposed composition of the SNB, this could be mitigated at least in part. Additional appointments could be made to the SNB – and or resources be made available to the SNB – provided that appointments to the SNB were transparent to ensure the independence of subsequent SNB members.

#### *Summary of residual specification risks*

34. Expanding the SNB's remit and giving it increased powers could mitigate some of our concerns. We consider that the risks with regard to the composition of the SNB can be mitigated by the inclusion of independent board members with a sufficiently broad range of skills and experience, by providing the SNB with resources commensurate with the task it is set and by amending the process for replacing members of the SNB.
35. However, the following residual concerns remain:
  - (a) significantly expanding the SNB's remit may make it more challenging for the SNB to carry out its functions effectively by bringing into scope more contentious areas, which is especially challenging when there is no bright line between editorial and commercial or strategic matters; and
  - (b) it is unclear what sanctions the SNB could have in case of attempts of editorial influence, especially with regard to members of the Murdoch family, which we discuss further when dealing with monitoring and enforcement risks (see paragraphs 49 to 68).

#### ***Circumvention risks***

36. An important source of circumvention risks with the Revised Firewall remedy is the absence of commercial and operational separation between Sky News and Sky.<sup>215</sup>
37. This gives rise to the risk that routine and necessary interactions between Sky News members of staff and other Sky and Fox employees – for example

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<sup>215</sup> See 'Dependency of Sky News on its parent company' in remedies section of the report.

about operational or other commercial matters – could provide both the occasion for influence and a mechanism for leverage used to influence Sky News. Changes to the culture at Sky, post Transaction, could similarly affect the ethos of Sky News, given that all Sky and Sky News staff would become Fox employees.

*Can the risk with regards to the absence of commercial and operational separation be adequately mitigated?*

38. The Revised Firewall remedy commits to provide a Sky News branded service and provide Sky News with funding similar to its current level of net operational investment for five years, with a further five years at a level to be determined depending on market conditions at the time. We considered this goes some way to reducing Sky News' reliance on Sky and Fox post Transaction by giving Sky News a degree of financial autonomy. At the response hearing the Head of Sky News told us [REDACTED]. At their response hearings, the Parties told us that the Sky budget contained some headroom or unallocated spend.
39. However, as our Merger Remedies Guidelines highlight,<sup>216</sup> firewall remedies are normally accompanied by measures to keep apart, physically and organisationally, people and functions who are to be prevented from sharing information.
40. Sky News is not a standalone business and this is not envisaged to change as part of the Revised Firewall remedy. For example, at the response hearing, Sky CEO Jeremy Darroch told us [REDACTED]. In particular, he outlined [REDACTED]:  
  
[REDACTED].
41. Given this pre-existing relationship, Sky would therefore need to continue to support Sky News, both financially and through the provision of shared services (such as facilities management, HR, finance, IT, advertising sales, marketing and communications) for the duration of the remedy, which would be indefinite (unless subject to a sunset provision).
42. The continued commercial integration would also necessitate ongoing discussions between the Head of Sky News and other Sky and Fox executives about, for example, budget projections or the volume and nature of services being provided by Sky or Fox, or about technological developments.

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<sup>216</sup> [Merger Remedies Guidelines](#), paragraph 4.21.

43. The fact that ongoing legitimate commercial interactions between Sky, Sky News and Fox would be taking place on the same physical site presents a significant risk to the effectiveness of the Revised Firewall remedy. Such interactions could present both an occasion at which influence could be attempted and provide scope for leverage.
44. It is hard to see how the Head of Sky News' editorial independence could be fully safeguarded if others control the overall commercial strategy of Sky News. The Head of Sky News could be granted some independence and autonomy in respect of editorial decisions and be required to report to the SNB instead of a Sky executive (a Fox employee post Transaction). However, Fox's legitimate decisions (as parent company) on a variety of matters could in practice frustrate the execution of these decisions. Such matters could include budget allocations, for example over the number and type of staff at his or her disposal, whether to involve Sky News in the scope of major technological or commercial initiatives, or strategic marketing decisions over, for example, the target audience for Sky News. The five-year funding commitment for Sky News still leads to the risk that future funding would remain a point of leverage for Fox, and hence the MFT, over Sky News, both during the initial funding period and thereafter.
45. In principle, a longer term or more extensive budgetary settlement could be agreed – for example of ten years. However, the Parties submitted and we also consider that it is extremely difficult to predict what sort of funding would be appropriate in ten years. Further, even with a ten-year settlement, this would still raise the question of what happens at the end of this period, or what would happen if Sky News required funding over and above the current commitment.
46. Likewise, more stringent restrictions could be imposed on interactions between Sky News staff and other Sky and Fox employees, with greater codification of acceptable interactions. However, such restrictions do not currently exist and could come at a cost to the efficient operation of Sky News, as a dynamic news gathering organisation. Given this, circumvention risks cannot sensibly be avoided.

#### *Summary of residual circumvention risks*

47. The circumvention risks we identified flow directly from the underlying context of the remedy, as previously explained (see 'Dependency of Sky News on its parent company' in the remedies section of the report), including the integration of Sky News within Sky. Therefore, to be effective the Revised Firewall remedy would require separation to be created and enforced where it does not currently exist.

48. As such, while the risks might be mitigated to some degree, for example, by restricting, monitoring or codifying certain interactions - notwithstanding the appropriateness of doing so - it is unlikely to be practicable to address fully the circumvention risks.
49. Of greater concern to us are the limits on the extent to which Sky News can be financially insulated from influence that arises as a result of the Transaction. As a consequence, the need for Sky News to secure funding outside of the Fox commitment would remain a point of leverage for Fox, and hence the MFT, over Sky News.

### ***Monitoring and enforcement risks***

50. In the event that the specification and circumvention risks could be overcome, any behavioural remedy aimed at regulating individual or corporate behaviour would need to be amenable to effective monitoring and enforcement in order to be effective. This has three interrelated dimensions:
  - (a) evaluation: it must be straightforward as a factual matter to establish whether or not there has been a breach of the remedy;
  - (b) detection: there needs to be a high likelihood that any breach of the remedy will be detected; and
  - (c) enforcement: there needs to be a robust framework for enforcement of any breach of the remedy, with sufficiently powerful sanctions in place to override any countervailing incentives not to comply.
51. As previously noted any potential firewall remedy would need to apply to a business unit (Sky News) that is already integrated into a larger entity (Sky), rather than maintaining an existing separation. It would also have to address the different forms in which influence can be exerted, directly and indirectly and incrementally over time. With this context in mind, we identified risks associated with each of the three dimensions outlined above, which have not been adequately addressed in the Revised Firewall remedy. The three risks are:
  - (a) the Revised Firewall remedy does not address the issue of how communication between Fox or Sky employees and editorial personnel at Sky News would be determined to constitute a breach, given this will be challenging to establish and open to interpretation;
  - (b) there is a risk that breaches will not be detected, given the weakness of the monitoring mechanism and the fact that incentives for reporting such breaches are weak; and

- (c) the Revised Firewall remedy lacks sufficient enforcement powers and provides insufficient sanctions to incentivise compliance.

*Can the risk with regard to evaluating breaches be mitigated?*

52. The monitoring and enforcement of any behavioural remedy will be less effective where it is difficult or costly to establish whether or not a breach has occurred. If a potential breach is identified it should be a straightforward factual matter to establish, that is not open to interpretation or debate.
53. However, as set out in in 'Dependency of Sky News on its parent company' in the remedies section of the report, in this case, following the Transaction there will be ongoing legitimate commercial interactions between Sky News, Sky and Fox, often taking place on the same physical site. Determining whether a specific interaction between a Fox or Sky employee and editorial personnel at Sky News constituted a breach, will be challenging to establish and potentially subjective.
54. While specific conversations or actions may have observable consequences – for example, in terms of scheduled programming or appointments – it would be very difficult for the SNB or any external body monitoring the Revised Firewall remedy to evaluate cause and effect and determine whether or not a breach had occurred.
55. Further, some of the communication between Sky News and other Sky or Fox employees may be verbal with no written record available. Even in instances where there may be evidence available - for example over a potential funding dispute between Sky News and Sky or Fox - it may be unclear and still potentially a subjective task for the SNB (or any such board) to evaluate whether Fox is in breach of the undertakings or not.
56. In summary, we consider that it will be inherently difficult to define clearly what constitutes an 'attempt to influence editorial choices', particularly given the close ongoing commercial, managerial and financial connections that would exist between Fox, Sky and Sky News post Transaction. While this might be mitigated by specifying detailed ground rules, there is always likely to be an element of ambiguity which cannot be removed.

*Can the risk with regard to detecting breaches be mitigated?*

57. In order for a behavioural remedy to be monitored effectively there must be a high likelihood of detecting a breach.

58. Fox described the Revised Firewall remedy as ‘self-monitoring’ due to the functions given to the SNB and the duty of Sky News employees to report any undue influence to it.
59. However, it is difficult to see a practical way to verify whether the Revised Firewall remedy is being observed in practice. For example, it would not be possible to always be able to monitor every direct or indirect interaction and, even in relation to those it was possible to monitor, it would be difficult, if not impossible, to detect what might be implicit understandings that influence editorial decisions.
60. Furthermore, even if such communications could be detected, it would be difficult to show conclusively that they were intended to result in editorial influence.
61. The Revised Firewall remedy also relies on Sky News staff raising any concerns over attempts to influence. However, any potential concerns are likely to be difficult to substantiate with actual evidence and even if such evidence exists, Sky News staff may not be incentivised to do so.
62. We also consider that there is no practical way of detecting softer influence over Sky News, such as gradual change over time in the culture of Sky, in which Sky News is fully embedded.

*Can the lack of enforcement and sanctions be mitigated?*

63. The Merger Remedies Guidelines<sup>217</sup> state that for behavioural remedies to have the desired impact 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.
64. There is nothing in the Revised Firewall remedy that addresses enforcement. Although Fox told us that it would take such matters very seriously,<sup>218</sup> the sanctions that would be imposed – and the circumstances in which this would happen – were not set out in the Revised Firewall remedy. It is also unclear what, if any, action Fox would take against a member of the Murdoch family if they were found to be in breach of any undertakings given.
65. Although the Revised Firewall remedy could be expanded to set out the sanctions that Fox would impose on anyone caught in breach of the remedy,

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<sup>217</sup> [Merger Remedies Guidelines](#), paragraph 4.3.

<sup>218</sup> At its response hearing Fox told us that: [redacted].



more fundamentally, it is not clear that statutory enforcement of the Revised Firewall remedy by the Secretary of State, which is the ultimate sanction available for remedy enforcement, would be sufficient to mitigate our concerns. Statutory enforcement can only occur after the event. The difficulties of monitoring by a third party mean that it is hard to see that the possibility of enforcement action could provide sufficiently powerful incentives to deter non-compliance, or actions taken that could undo the adverse effects of exercising influence.

#### *Summary of residual monitoring and enforcement risks*

66. Sky News is embedded within Sky. Even if the SNB's remit were expanded from that proposed in the Revised Firewall remedy, the SNB in fulfilling its obligations would be required to be aware of conversations taking place in private between Sky News and employees and individuals at Sky, Fox and those connected with the MFT, in an environment where there are ongoing interactions in the normal course of business. Therefore, there would be very substantial ongoing risks in monitoring the Revised Firewall remedy proposed by Fox or even an enhanced version of it.
67. With regards to enforcement, even if the Revised Firewall remedy provided for specific disciplinary procedures against employees found in breach of them, it is not clear what sanctions could be imposed on the members of the Murdoch family. Further it is not clear that statutory enforcement by the Secretary of State would be sufficient to mitigate our concerns or provide sufficient deterrent.
68. The inability for the Revised Firewall remedy to be effectively monitored and enforced fundamentally considerably undermines its effectiveness. We consider that there would remain substantial risks in monitoring and enforcing the Revised Firewall remedy. Moreover, as with all behavioural remedies there is a risk that the effectiveness of the behavioural elements would degrade over time.

## Appendix R: Ring-fencing remedy assessment

1. This appendix sets out our detailed assessment of Fox's Ring-fencing remedy in addressing the effects adverse to the public interest identified in the report.
2. We considered whether the Ring-fencing remedy would be able to deal with the residual risks and concerns identified in relation to the Revised Firewall remedy, as analysed in appendix Q, to address the effects adverse to the public interest identified in the report.
3. Therefore, we considered the risks arising from the following factors in this case:
  - (a) NewCo's potential financial dependence on Fox post Transaction;
  - (b) NewCo's potential operational dependence on Sky post Transaction; and
  - (c) monitoring and enforcement risks.

### Financial dependence on Fox

4. As with the Revised Firewall remedy, a potential risk would arise under the Ring-fencing remedy from NewCo's ongoing financial dependence on Sky and Fox following the Transaction.
5. This arises from the commercial and financial weakness of Sky News as a standalone entity. Sky News is not currently profitable. This risk was highlighted by Ofcom, which considered that Sky News' financial position and reliance on Sky was such that it meant a structural separation remedy could pose a risk to media plurality through the degradation of Sky News if the separation meant severing the links between Sky News and Sky. It was reported that an undertaking based on structural separation may lead to the risk of the scale of Sky News decreasing over time, given the inherent difficulties in sustaining a loss-making unit outside of the Sky corporate structure. A degradation or loss of Sky News could potentially present risks to plurality equal to or greater than those presented by the Transaction itself.<sup>219</sup>
6. Under the Ring-fencing remedy, the management of NewCo would, at least in the short term (and potentially permanently),<sup>220</sup> require Sky to pay NewCo for

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<sup>219</sup> Ofcom Public Interest Report, page 104, paragraph 11.22.

<sup>220</sup> In the longer term, NewCo might find new customers for its news services but initially, and probably for several years, it would be financially dependent on Sky.

the provision of news services. The proposed financial envelope is an attempt to deal with this.

7. The financial envelope creates a continuing link between Fox, Sky and Sky News and commits Fox to provide funding at the current levels of net investment in Sky News to NewCo. We consider that the financial envelope, which is a significant commitment, covers NewCo's costs in the ordinary course of business. However, in the event that NewCo required additional financial resources, for example because of changes in the market or technological developments, or if NewCo wished to pursue new commercial opportunities, it is Fox, NewCo's parent company post Transaction, that would decide whether or not to fund the request. This is, therefore, a risk factor identified in the Merger Remedies Guidelines<sup>221</sup> and is a problem in this case because Fox would retain some control over NewCo's finances, when pre Transaction it had none.
8. This continuing link could not be severed because Fox would be the parent company of NewCo, having increased its shareholding to 100%. NewCo as a small, loss-making entity would have no commercial means of raising the finances itself, making it reliant on Fox. In such a scenario where NewCo required additional financial resources, a standalone Sky News/NewCo would have little or no countervailing bargaining power relative to Sky and Fox. Consequently, the continued financial link between NewCo and its parent Fox would create the risk that Fox would have a degree of leverage over NewCo that it did not have before the Transaction, when Sky News was part of Sky.
9. To counter this, the Ring-fencing remedy provided for a commitment that if Fox rejected a NewCo funding request the dispute could be settled in the London Court of International Arbitration. This, however, would not address the power that Fox retains as a result of the lack of financial independence of NewCo. Rather, it highlights the ongoing power that Fox would retain and the vulnerability of NewCo. The fact that Fox would be able to reject a NewCo board funding request illustrates the limitations facing NewCo in pursuing its own objectives outside of the proposed financial envelope and pressure to secure Fox's support, which could include pressures on editorial output.
10. A further option proposed by Fox was to transfer the ownership of NewCo to an independent trust company. However, this would not address the financial link between the Parties as NewCo would still remain reliant on Fox for any

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<sup>221</sup> The [Merger Remedies Guidelines](#) state that 'A purchaser should not have continuing links with the merger parties after divestiture that may compromise the purchaser's incentives to compete with these parties, eg financial, ownership or management links.' (paragraph 3.18). However, in the case of advertising sales, this would not necessarily be problematic since Sky News could contract with another airtime sales house if it wished to sever the link with Sky Media.

financing outside of the financial envelope. Therefore, the risks identified above would still remain even if the NewCo was under the ownership of an independent trust company.

## **Operational dependence on Sky**

11. Sky News is operationally integrated within Sky and relies on it for a number of support functions (see paragraphs 'Dependency of Sky News on its parent company in the remedies section of the report) which, if it remained on the Osterley Campus, it would continue to share with Fox as it would in the Revised Firewall remedy. Fox told us that [✂].
12. Consequently, NewCo would have to rely on Sky for these services, and would need to negotiate terms which enabled it to operate effectively. These operations would give rise to continuing links between Sky and Sky News similar to those we considered in relation to the Revised Firewall remedy (see Appendix Q, paragraph 36 onwards) which may give Fox some leverage over Sky News or opportunities to circumvent the commitments. It could also pose the risk that a ring-fenced Sky News would not be able to secure attractive terms.
13. We consider this to be less of a risk than the financial dependence, however it provides a means through which the MFT, through Fox, could influence Sky News.
14. We consider that this risk would be reduced under the Ring-fencing remedy, compared to the Revised Firewall remedy. The former provides for the appointment of a monitoring trustee to act on behalf of the Secretary of State until these operational agreements, now under this remedy between two separate legal entities, are agreed and are in place. The residual risks arising from NewCo's ongoing operational dependence on Sky relate to the circumvention risk that arises from the ongoing interactions between Sky News and Sky post Transaction. At the very least this risk would require monitoring.
15. While this operational dependence would also likely be true of a divestiture of Sky News, in contrast to the Ring-fencing remedy, the countervailing power of the buyer, an independent third party with an incentive to negotiate good terms would reduce any risks arising from operational dependence under a divestiture scenario.

## Monitoring and enforcement

16. The Ring-fencing remedy is quasi-structural as it continues to have behavioural elements to it that must be monitored and enforced on an ongoing basis by the Secretary of State.
17. As previously outlined in our assessment of the Revised Firewall remedy (see Appendix Q, paragraphs 49 to 68), the effectiveness of monitoring and enforcement of any behavioural remedy can be compromised where it is difficult or costly to establish whether or not a breach has occurred. If a potential breach is identified it should be a straightforward factual matter to establish, that is not open to interpretation or debate.
18. Further, for a behavioural remedy to be monitored effectively there must be a high likelihood of detecting a breach. Moreover, as with all behavioural remedies, there is a risk that the effectiveness of the commitments would degrade over time.
19. We remain concerned that the ongoing monitoring and enforcement of the proposed Ring-fencing remedy would undermine the effectiveness of the remedy, would be costly and difficult. Pursuant to the Ring-fencing remedy, Fox will become the 100% owner of NewCo, a 100% subsidiary of Fox post Transaction. All Sky employees effectively become employees of Fox and Fox will have ongoing legal obligations to ensure effective stewardship and governance over NewCo and its assets.
20. While there is greater separation between Sky News and the MFT than the Revised Firewall remedy, there is not complete separation. Consequently, it is difficult to see a practical way for the Secretary of State to verify whether the undertakings are being observed in practice. For example, it would not be possible or desirable for the Secretary of State to monitor every direct or indirect interaction involving NewCo employees, Fox executives and members of the Murdoch family. Even in relation to those interactions that it was possible to monitor, it would be difficult, if not impossible, to detect what might be implicit understandings that influence editorial decisions. Our concerns about media plurality flow from the significantly increased level of control the MFT will be able to exercise over Sky and Sky News through its control of Fox combined with Fox's ownership of Sky post Transaction, and reinforced by informal means including through relationships between certain directors of Fox and either the MFT or members of the Murdoch family, or both.
21. Notwithstanding the personal undertakings from named Murdoch family members not to influence editorial decision making at NewCo, for the Ring-fencing remedy to be effective, like the Revised Firewall remedy, it would be

necessary for conversations taking place in private between NewCo employees and individuals at Sky, Fox and those connected with the MFT to be monitored. This would be in an environment where there remain interactions in the normal course of business and NewCo is a 100% owned subsidiary of Fox.

22. In this case, we consider that there would remain substantial risks in monitoring and enforcing the Ring-fencing remedy with regard to evaluating and detecting breaches, which include various personal interactions at different levels. We conclude that the Ring-fencing remedy would not be practical, would be costly and difficult which ultimately undermines its effectiveness.
23. Fox's proposal to transfer ownership to an independent trust company would not remove the need for monitoring and enforcement in a remedy that contains numerous behavioural elements. We do not consider that there is a practical way to address the risks to monitoring and enforcing a Ring-fencing remedy.

## Glossary

<b>20/20 rule</b>	The national cross-media ownership rule provided in <b>CA03</b> which prohibits a newspaper operator with a market share of 20% or more of newspaper circulation from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.
<b>ACMA</b>	Australian Communications and Media Authority, an Australian statutory authority responsible for ensuring the facilitation and regulation of media and communications.
<b>The Act</b>	Enterprise Act 2002.
<b>The 1990 Act</b>	Broadcasting Act 1990.
<b>The 1996 Act</b>	Broadcasting Act 1996.
<b>ABC</b>	American Broadcasting Company, owned by the Disney Media Networks division of <b>The Walt Disney Company</b> .
<b>ABC News</b>	The news division of <b>ABC</b> .
<b>AGM</b>	Annual General Meeting of shareholders of a company.
<b>Al Jazeera</b>	<b>Al Jazeera</b> Media Network, a Middle Eastern multinational multimedia conglomerate, which operates the news channel <b>Al Jazeera</b> .
<b>ANC</b>	Australian News Channel (ANC), which broadcasts the suite of <b>Sky News</b> channels, is a wholly owned subsidiary of <b>News Corp</b> .
<b>ASTRA code</b>	Subscription Broadcast Television Code of Practice 2013 by <b>ASTRA</b> .
<b>ATV</b>	Actual Television, a nationwide television channel in Turkey.
<b>BARB</b>	Broadcasters' Audience Research Board, an organisation that measures TV viewing in the UK.
<b>Bauer</b>	<b>Bauer</b> Media Group, a European-based media company that manages a large range of magazines, digital products, TV stations and radio stations worldwide.

<b>BBC</b>	British Broadcasting Corporation, a UK-based public service broadcaster operating a number of TV channels including BBC News, radio stations and websites.
<b>BCAP</b>	The Broadcast Committee of Advertising Practice, a UK regulatory body responsible for writing and reviewing the UK Code of Broadcast Advertising.
<b>BCAP Code</b>	The Code of Broadcast Advertising written and reviewed by <b>BCAP</b> .
<b>Bloomberg</b>	<b>Bloomberg LP</b> , a US-based financial software, data and media company headquartered in New York City.
<b>Breitbart</b>	<b>Breitbart News Network</b> , an American website publishing news, opinion and commentary since 2007.
<b>Broadcaster</b>	An organisation that transmits a programme or information by radio or TV.
<b>The Broadcasting Code</b>	This refers to the following codes together: <b>Ofcom</b> Broadcasting Code (Incorporating the Cross-promotion Code) - Revised December 2009, <b>COSTA</b> , <b>CUDBPA</b> and the <b>BCAP Code</b> .
<b>Broadcasting standards objective</b>	Standards objectives set out in section 319 of CA03.
<b>BSB</b>	British Satellite Broadcasting, a UK TV company no longer in operation since 1990.
<b>BSkyB</b>	Former name of <b>Sky</b> .
<b>BTN</b>	Big Ten Network, an American sports network owned partially by <b>Fox</b> .
<b>BuzzFeed</b>	The UK division of an American news and entertainment company namely BuzzFeed Inc.
<b>CA03</b>	Communications Act 2003.
<b>CAT</b>	UK Competition Appeal Tribunal.
<b>CBS</b>	<b>CBS Corporation</b> , an American mass media corporation which also operates the news channel CBS News.



<b>CC</b>	Competition Commission (predecessor of the <b>CMA</b> ).
<b>CEO</b>	Chief Executive Officer.
<b>CFO</b>	Chief Financial Officer.
<b>Channel 4</b>	Channel Four Television Corporation, a UK based media company which operates the TV network <b>Channel 4</b> .
<b>Channel 5</b>	A UK TV network channel owned by Viacom Inc, an American multinational media conglomerate.
<b>Class A Common Stock</b> (non-voting stock)	Both <b>Fox</b> and <b>News Corp</b> have dual class stock, with different rights attaching to each. Class A Common Stock refers to stock in <b>Fox</b> and <b>News Corp</b> to which no voting rights attach.
<b>Class B Common Stock</b> (voting stock)	Both <b>Fox</b> and <b>News Corp</b> have dual class stock, with different rights attaching to each. Class B Common Stock refers to stock in <b>Fox</b> and <b>News Corp</b> to which voting rights attach.
<b>Click bait</b>	The practice of presenting news stories in a way to attract attention and encourage visitors to click on a link to a particular webpage.
<b>Click through</b>	The act of clicking on a link (generally embedded in a post on social media) to a particular webpage.
<b>CNN</b>	Cable News Network, an international news channel owned by the American media company Turner Broadcasting System, Inc.
<b>CMA</b>	Competition and Markets Authority, competition regulator for the UK.
<b>comScore</b>	An American media measurement company.
<b>comScore MMX Multi-Platform</b>	An online measurement tool comprising audience data from desktop, smartphone and tablet data sources, unduplicated to create a multi-platform view of use (ie a single user may be recognised as visiting an entity on both their desktop and smartphone).
<b>COO</b>	Chief Operating Officer.

<b>COSTA</b>	Code on Scheduling of Television Advertising by <b>Ofcom</b> .
<b>CPS</b>	Crown Prosecution Service, the principal public prosecuting agency for conduction criminal prosecutions in England and Wales.
<b>Cross-platform reach</b>	Reach across all types of platforms both online and offline in total.
<b>Cross-usage</b>	Simultaneous use of more than one platform/media by a single user.
<b>Cruden</b>	<b>Cruden</b> Financial Services LLC, a subsidiary of the <b>MFT</b> .
<b>CSC</b>	Compliance Steering Committee at <b>News Corp</b> and <b>Fox</b> .
<b>CUDBPA</b>	The Code on the Prevention of Undue Discrimination between Broadcast Advertisers.
<b>Daily Mail</b>	A UK news publication in print owned by <b>DMGT</b> .
<b>The Daily Telegraph</b>	A UK news publication both online and in print owned by Telegraph Media Group.
<b>DCMS</b>	Department for Digital, Culture, Media and Sport in UK government.
<b>The Directive</b>	The Audiovisual Media Services Directive (EC Directive 2010/13/EU).
<b>Discovery</b>	Discovery Communications, an American company which owns channels such as the Discovery Channel and Animal Planet.
<b>Disney</b>	The Walt Disney Company, an American diversified multinational mass media and entertainment conglomerate.
<b>DMGT</b>	Daily Mail and General Trust, a UK company and owner of both the <b>Daily Mail</b> and <b>the Mail Online</b> among other business entities.
<b>Domain</b>	The set of all internet site owned by an organisation.
<b>DTH</b>	A new technology for the broadcasting of TV signals.

<b>DTI</b>	Department of Trade and Industry in UK government (former).
<b>EBITDA</b>	A company's earnings before interest, taxes, depreciation, and amortisation.
<b>ECHR</b>	European Convention on Human Rights.
<b>The Editors' Code</b>	<b>IPSO</b> Editors' Code of Practice set by the Editors' Code of Practice Committee.
<b>EEA</b>	European Economic Area.
<b>EIN</b>	European Intervention Notice, a notice (under section 67(2) of <b>the Act</b> ) from the <b>Secretary of State</b> stating the public interest consideration(s) relevant to a relevant merger situation (as defined by section 23 of <b>the Act</b> ).
<b>EMEA</b>	A region covering Europe, Middle East and Africa.
<b>ERMS</b>	European Relevant Merger Situation as defined by section 68(2) of <b>the Act</b> .
<b>The Evening Standard</b>	The London Evening Standard, a news publication both in print and online owned by Alexander Lebedev.
<b>Facebook</b>	<b>Facebook</b> Inc, an American company which operates a major online <b>social media</b> network.
<b>Fair Trading Act 1973</b>	Previously enforced both consumer protection and competition law prior to the enactment of <b>the Act</b> .
<b>FCC</b>	The Federal Communications Commission, an independent American agency of the US government which regulates interstate communications by radio, TV, satellite, and cable.
<b>FCNS</b>	<b>Fox</b> Cable Network Services, an entity of <b>Fox</b> .
<b>FCPA</b>	Foreign Corrupt Practices Act.
<b>FEG</b>	<b>Fox</b> Entertainment Group, an entity of <b>Fox</b> .
<b>FT</b>	Financial Times, a UK news publication both in print and online owned by The Nikkei.

<b>FTE</b>	Full time equivalent, a unit that indicates the workload of an employee.
<b>FTSE</b>	Financial Times Stock Exchange.
<b>FTSE 100</b>	A share index of the 100 companies listed on the London Stock Exchange with the highest market capitalisation.
<b>FNG</b>	<b>Fox</b> Network Groups, an entity of <b>Fox</b> .
<b>Fox</b>	21st Century <b>Fox</b> , Inc., an American media company.
<b>Fox Extra</b>	Narrated reports on non-major news covering a variety of topics by <b>Fox</b> .
<b>GCCOs</b>	Group Chief Compliance Officers at <b>News Corp</b> and <b>Fox</b> .
<b>Global Radio</b>	Global, a UK media company which owns a large number of radio stations including Capital FM.
<b>GMG</b>	Guardian Media Group, a UK media company that owns the UK news publication <b>The Guardian</b> among others.
<b>Google</b>	<b>Google</b> LLC, a global technology company and owner of <b>Google</b> search engine and YouTube.
<b>The Guardian</b>	A news publication both online and in print forming part of the <b>Guardian Media Group</b> , owned by Scott Trust Limited.
<b>Guidance Notes</b>	Guidance on the <b>Ofcom Broadcasting Code</b> .
<b>House of Lords report</b>	House of Lords Select Committee on Communications first report of 2014/15 Media Plurality.
<b>HQ</b>	A company's headquarters.
<b>HR</b>	Human Resources department of a company.
<b>HuffPost UK</b>	A UK online news publication owned by The Huffington Post Media Group UK.
<b>ICO</b>	UK Information Commissioner's Office, a UK independent authority set up to uphold information rights in the public interest and promote openness by public bodies and data privacy for individuals.

<b>Initial Firewall remedy</b>	The firewall remedy initially proposed to the <b>CMA</b> by <b>Fox</b> , in response to the <b>Remedies Notice</b> .
<b>IMPRESS</b>	The Independent Monitor for the Press, an independent press regulator in the UK.
<b>Impression(s)</b>	The <b>impression</b> of a post or a link is recorded when a user sees that post on that link on his or her screen.
<b>The Independent</b>	<b>The Independent</b> , a news publication both in print and online owned by Alexander Lebedev.
<b>Independent board</b>	An <b>independent board</b> is a corporate board of directors that has a majority of independent directors who are not affiliated with the top executives of the firm and have minimal or no business dealings with the company to avoid potential conflicts of interests.
<b>Independent director</b>	An <b>independent director</b> is a director (member) of a board of directors who does not have a material or pecuniary relationship with the company or related persons.
<b>Independent shareholder(s)</b>	Any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder.
<b>Inquiry</b>	The phase 2 <b>CMA</b> investigation into the anticipated acquisition of <b>Sky</b> by <b>Fox</b> .
<b>Inquiry Group</b>	The appointed Panel Members overlooking the phase 2 <b>CMA</b> investigation into the acquisition of <b>Sky</b> by <b>Fox</b> .
<b>Intermediary</b>	An online platform that distributes news content from various publishers.
<b>IPSO</b>	Independent Press Standards Organisation, an independent regulator for the newspaper and magazine industry in the UK. Regulates all <b>News UK</b> newspaper titles.
<b>IRN</b>	Independent Radio News, a provider of news bulletins for commercial radio stations in the UK and other countries. Owned by <b>Sky</b> .
<b>Issues statement</b>	Statement of issues in relation to the phase 2 <b>CMA</b> investigation into the anticipated acquisition of <b>Sky</b> by <b>Fox</b> .

<b>ITN</b>	Independent Television News, a UK news channel owned partially by <b>ITV Plc</b> and <b>DMGT</b> among other owners.
<b>ITV</b>	Independent Television, a UK TV channel owned by <b>ITV Plc</b> .
<b>LBC</b>	Leading Britain's Conversation, a UK radio station.
<b>Lord Justice Leveson</b>	Lord Justice Leveson, Chair of the <b>Leveson Inquiry</b> .
<b>Leveson Inquiry</b>	The <b>Leveson Inquiry</b> , a public inquiry into the culture, practices and ethics of the press chaired by <b>Lord Justice Leveson</b> .
<b>The Mail Online</b>	A news publication online owned by <b>DMGT</b> .
<b>Media ownership and plurality consultation report</b>	Report on media ownership and plurality by <b>DCMS</b> .
<b>Metro</b>	Free of charge UK news publication in print published by DMG Media Ltd.
<b>MFS</b>	Massachusetts Financial Services Investment Management, a global active investment manager and shareholder of <b>Sky</b> .
<b>MFT</b>	Murdoch Family Trust, a trust established for the benefit of Rupert Murdoch's children and charities. The MFT currently has holdings in a number of entities including <b>Fox</b> and <b>News Corp</b> .
<b>MRC</b>	Media Reform Coalition, an organisation that coordinates contributions from civil society groups, academics and media campaigners to debates over media regulation, ownership and democracy.
<b>MSC</b>	Management and Standards Committee at News Corporation set up in July 2011 to deal with matters such as The News of the World voicemail interception case and an investigation into payments to public officials.
<b>Multi-sourcing</b>	The practice of consumers using a variety of alternative sources of news which could also be set across different types of platforms.

<b>NASDAQ</b>	An American stock exchange on which <b>Fox</b> is listed.
<b>NASDAQ Global Select Market</b>	A market tier of <b>NASDAQ</b> where stocks of public companies that meet the highest listing standards in world are traded.
<b>National Geographic channels</b>	Channels with shows that include documentaries related to geography, archaeology and natural science, owned by <b>Fox</b> .
<b>NCGC</b>	Nominating and Corporate Governance Committee of <b>Fox</b> (and formerly News Corporation).
<b>NCC</b>	The National Communications Commission Republic of China (Taiwan).
<b>NCS</b>	News Consumption Survey by <b>Ofcom</b> .
<b>NewCo</b>	The new legal entity that would be established following the legal separation of Sky News from <b>Sky</b> , as referred to in the <b>Ring-fencing remedy</b> and <b>Divestiture remedy</b> proposed by <b>Fox</b> to the <b>CMA</b> .
<b>News Corp</b>	US-based company partly owned by the <b>MFT</b> via a 39% share.
<b>News International</b>	Former subsidiary of <b>News Corp</b> now no longer in operation.
<b>News UK</b>	News UK and Ireland Ltd., a wholly owned subsidiary of <b>News Corp</b> operating in the UK, and owns news titles such as <b>The Sun</b> and <b>The Times</b> .
<b>Northern and Shell</b>	Northern and Shell Media Group, a UK publishing group and owner of news publications such as the Daily Express and Daily Star.
<b>NGN</b>	News Group Newspapers, a wholly owned subsidiary of News UK and the operator of news publications such as The Sun and The Sun on Sunday.
<b>NMA</b>	News Media Association, an association of national, regional and local UK news media organisations.

<b>Non-voting stock</b>	<b>Non-voting stock</b> is stock that provides the shareholder no vote on corporate matters, such as election of the reference of directors.
<b>NRS</b>	National Readership Survey, a joint venture company in the UK which provides audience research for print advertising trading in the UK.
<b>Ofcom</b>	The Office of Communications, the UK's communications regulator.
<b>Ofcom measurement framework</b>	Ofcom measurement framework for media plurality
<b>Ofcom media plurality advice</b>	Ofcom guidance on media plurality
<b>Ofcom Public Interest Report</b>	Report on the public interest test for the proposed acquisition of <b>Sky</b> by <b>Fox</b> (phase 1) by <b>Ofcom</b> .
<b>OFT</b>	The Office of Fair Trading (predecessor of the <b>CMA</b> ).
<b>Opening letter</b>	The <b>CMA</b> 's letter to the <b>Parties</b> of a <b>Transaction</b> informing them of the Terms of Reference and focus of the <b>Inquiry</b> .
<b>The Order</b>	Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (as amended).
<b>The Parties</b>	Reference to <b>Fox</b> and <b>Sky</b> collectively.
<b>PCC</b>	Press Complaints Commission, an independent body which used to deal with complaints from the members of the public about editorial content in newspapers and magazines, but is no longer in operation and was replaced by <b>IPSO</b> in September 2014.
<b>phase 1</b>	First stage of <b>CMA</b> investigation in jurisdictional matters and <b>Ofcom</b> 's investigation of media plurality and commitment to broadcasting standards as referred by the <b>Secretary of State</b> on 16 March 2017.
<b>phase 2</b>	Second stage of <b>CMA</b> investigation into the anticipated acquisition of <b>Sky</b> by <b>Fox</b> .



<b>PRP</b>	Press Recognition Panel, an independent body set up by Royal Charter to ensure that regulators of the UK press are independent, properly funded and able to protect the public.
<b>RAJAR</b>	Radio Joint Audience Research, a measurement and profiling of the audiences of UK radio stations.
<b>Reach</b>	The total number of people who have used a particular source over a defined period of time.
<b>Regional Channel 3</b>	Channel 3 on Freeview that varies according to region in the UK.
<b>Remedies Notice</b>	Notice of possible remedies, published by the <b>CMA</b> on 23 January 2018 for this <b>Inquiry</b> .
<b>Retail news provider</b>	Individual title or brand that provides content to users of news.
<b>Retweet</b>	Sharing of a message or post on <b>Twitter</b> .
<b>Revised Firewall remedy</b>	The revised and latest Firewall remedy with accompanying undertakings proposed by <b>Fox</b> to the <b>CMA</b> following a response hearing with <b>Fox</b> on 14 February 2018.
<b>Ring-fencing remedy</b>	One of two remedy proposals offered by Fox with accompanying undertakings to the <b>CMA</b> in response to the CMA's Remedies Working Paper, which offered the legal separation of <b>Sky News</b> into a new legal entity ( <b>NewCo</b> ), coupled with behavioural undertakings and also included interim safeguards and the appointment of a monitoring trustee, as a potential remedy to the adverse effects to the public interest identified by the CMA in its report.
<b>RFC</b>	Regulatory Funding Company, a company charged with raising a levy on the news media and magazine industries to finance <b>IPSO</b> .
<b>RLCS</b>	Radio Licensable Content Service.
<b>RT</b>	Russia Today, a Russian international TV news network channel funded by the Russian government.
<b>RTUK</b>	Turkish Radio and Television Council.

<b>SEC</b>	Securities and Exchange Commission.
<b>Share of reference</b>	The <b>share of reference</b> is a metric of news consumption across different platforms. It is calculated by asking people which news sources they use and the frequency with which they use them.
<b>Sky</b>	<b>Sky Plc</b> , a media company headquartered in the UK and owner of <b>Sky News</b> .
<b>Sky News</b>	The news arm of <b>Sky</b> operating in the UK.
<b>SLC</b>	Substantial lessening of competition, a test applied by the <b>CMA</b> under the UK merger control regime.
<b>Social media</b>	Online platform through which users engage and share content.
<b>Secretary of State</b>	Secretary of State for Digital, Culture, Media and Sport.
<b>SNB</b>	The Sky News Board, a ‘fully’ independent ‘expert’ board to protect the editorial independence of <b>Sky News</b> , as referred to and proposed in the <b>Revised Firewall remedy</b> proposed by <b>Fox</b> to the <b>CMA</b> .
<b>SPA</b>	Sale and Purchase Agreement, in this case for the sale of <b>Sky News</b> to <b>Disney</b> .
<b>STAR channels</b>	STAR India Entertainment owned by <b>Fox</b> .
<b>The Competition and Consumer Protection Commission</b>	The Irish Competition Authority.
<b>The Divestiture remedy</b>	The second of two remedy proposals with accompanying undertakings offered by Fox to the <b>CMA</b> in response to the CMA’s Remedies Working Paper, offering the divestiture of <b>Sky News</b> to <b>Disney</b> as a potential remedy to the adverse effects to the public interest identified by the CMA in its report.
<b>The Sun</b>	A UK news publication both online (the Sun Online) and in print owned by <b>NGN</b> .

<b>The Takeover Code</b>	City code on takeovers and mergers applicable to listed companies in the UK.
<b>TCFFC</b>	Twentieth Century <b>Fox</b> Film Corporation.
<b>TCFHE</b>	Twentieth Century <b>Fox</b> Home Entertainment.
<b>The Times</b>	A UK news publication both online and print which is owned by Times Newspapers Ltd, a subsidiary of <b>News UK</b> .
<b>The Transaction</b>	The anticipated acquisition of <b>Sky</b> by <b>Fox</b> .
<b>The 1981 Times Undertakings</b>	Undertakings concerning the editorial quality and integrity of <b>The Times</b> , The Sunday Times and The Times Supplements, which were given to the Secretary of State for Trade in relation to the 1981 transaction between <b>News International</b> and <b>The Times</b> , The Sunday Times and The Times Supplements.
<b>Third party(ies)</b>	Parties that are not <b>Fox</b> or <b>Sky</b> .
<b>TLCS</b>	Television licensable content service, a TV service broadcast from a satellite, distributed using an electronic communications network or a service made available by a radio multiplex for which a license must be granted by <b>Ofcom</b> .
<b>Traditional media/organisation/platform</b>	Non-online media such as, but not limited to, TV, radio and print.
<b>Trinity Mirror</b>	<b>Trinity Mirror</b> Plc, a media company and owner of the news publication the Daily Mirror.
<b>TUPE</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
<b>Twitter</b>	<b>Twitter</b> Inc, owner of Twitter, a large <b>social media</b> site.
<b>UKOM</b>	UK Online Measurement Company, an industry governed multi-platform audience measurement in partnership with <b>comScore</b> .

<b>Wholesale provider/supplier of news</b>	Provider of news who produces and supplies news (as opposed to the practice of aggregating news from different original sources)
<b>Wholesale share of reference</b>	The share of reference at a wholesale level. The <b>CMA</b> has adopted wholesale allocations as provided by <b>Ofcom</b> in Figure A3.7 of the <b>Ofcom Public Interest report</b> .
<b>Wireless Group</b>	<b>Wireless Group Ltd</b> , a subsidiary of <b>News Corp</b> and a broadcasting and media company based in Northern Ireland.
<b>YouGov</b>	A UK market research and data analytics firm.