

The Campaign for Press & Broadcasting Freedom (CPBF) response to Ofcom's investigation into public interest considerations over the proposed acquisition of BSkyB plc by News Corporation.

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1.0 Introductory Comments

1.1 THE CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM

The Campaign for Press and Broadcasting Freedom is an independent organisation funded by its membership which links people working inside and outside the media. It works to improve diversity and accountability in the media and has campaigned since 1979 on a range of issues including ownership and control, censorship, public service broadcasting and media standards. For further details: www.cpbef.org.uk

1.2 The CPBF welcomes the decision by Business Secretary Vince Cable to initiate a public interest test into News Corporation's proposal to take total control of BSkyB by acquiring the remaining 60.9% of BSkyB shares it does not own.

1.3 News Corporation is a global media group spanning film, television, cable, satellite, newspapers, magazines and book publishing with assets valued in September 2010 at £33 (\$56) billion and annual revenues of £20.5 (\$33) billion. It is active in the United States, Continental Europe, United Kingdom, Australia, Asia and Latin America. News Corporation's 2009 Annual Report (available at http://www.newscorp.com/investor/annual_reports.html) lists its assets and reveals a very clear sense of the company's highly integrated global strategy and operations.

The CPBF believes the proposed takeover of BSkyB by News Corporation, would be a cross-media merger which, in terms of its scale and value, would represent a transformative shift in UK media ownership. It will have a considerable negative impact on media plurality which would become ever more pronounced and dramatic as BSkyB's operations became integrated into the overall global business and media operations of News Corporation. BSkyB and the UK arm of News Corporation's publishing operation, News International, are already the largest companies in their respective sectors. The sheer scale of the resources (financial, programming, marketing) which News Corporation could deploy against its UK competitors in broadcasting and publishing would put them at a massive competitive disadvantage.

An added dimension, which goes to the heart of media plurality and the basic requirement in democratic societies for limits on media ownership, is that it would boost the existing power and influence (political and commercial) which Rupert Murdoch, the chairman and CEO of News Corporation, already exerts within the UK. We develop these points and provide evidence to support them below.

2.0 News Corporation's Assets in the UK

2.1 News Corporation's media assets in the UK are already substantial. It has 100% ownership of News International (NI), which publishes *The Times*. *The*

Sunday Times, The Sun and *News of the World*. These titles accounted for 37.3% of national newspaper circulation in the UK in 2009 (in 2002 it was 35.8%). A number of economic and structural factors in the national newspaper industry (rising costs, shrinking circulation, and declining advertising revenue) already result in intense competition for both readers and advertisers. Such is its financial strength that News International, unlike competitors such as Trinity Mirror, will be able to absorb losses in order to gain market share whereas other, less wealthy companies will be forced to make significant cost savings to sustain margins. Under this scenario some titles might be forced to close whilst NI's market share would increase. Claire Enders predicts a market share of 40.5% for NI by 2014. (1)

2.2 HarperCollins, 100% owned by News Corporation, is a global publishing group and its UK arm is one of the top four publishers with sales of £132.3 million and a market share of 7.6%.

2.3 News Corporation's existing stake in BSkyB is 39.1%. The growing economic significance, and dominance, of BSkyB in the UK TV market is dramatically revealed in Ofcom's *The Communications Market Report 2010*. A graph for TV industry revenue (fig 2.28, p123) gives a figure of £11.9 billion for total television in 2009, compared with just over £10 billion in 2004. There are striking differences between the four main revenue sources. Subscription revenue has soared to nearly £4.6 billion (from £3.4 billion in 2004). Subscription revenue includes BSkyB, Virgin Media, BT Vision, Talk Talk TV and Setanta Sports (until its closure) but BSkyB accounts for 80% of subscription revenues. Other sources have either remained broadly static (BBC income) or slumped (TV advertising revenue).

The surge in BSkyB's revenues is due to its strategy of expanding the number of subscribers (on 8 November 2010 BSkyB announced it had ten million subscribers) and selling more products and services (HD, telephony, broadband, etc) to each subscriber. Over the next five years BSkyB's revenues are likely to grow even more strongly, taking total revenues to an estimated £6.95 billion or 48.6% of the total TV market by 2014. (2) The announcement in October 2010 of a six-year pay freeze in the BBC licence fee will inevitably lead to an increase BSkyB's TV revenue market share.

2.4 Sky's marketing prowess is another key factor in the strong growth of BSkyB's subscriber revenue. The scale of spending on marketing and advertising campaigns (£127 million in 2008) made BSkyB the fourth largest UK advertiser.

BSkyB, in terms of its broader activities and operations, has a number of characteristics which are also relevant to the public interest test, and we turn to these in the next section.

3.0 BSkyB's UK Operations

3.1 Premium Sports and Films. BSkyB has a budget of £1 billion in 2010 (comparable to the entire BBC budget for BBC1) to ensure its unassailable position in the provision of televised sports in the UK. There is not a serious rival when it comes to bidding for the live televised Premier League matches. Ofcom is aware of this situation as a result of its three-year investigation into the

wholesale and retail markets for premium sport and movies on pay-TV. The central issue for sports is Sky's market power, and Ofcom concluded that Sky was exploiting its market power by limiting the wholesale distribution of its premium channels, which effectively restricted competition from retailers on other platforms. Sky is still appealing Ofcom's decision that it must make Sky Sports 1 and 2 available on other platforms. Even if Ofcom's remedy is upheld, Sky still has the flexibility to shift content on to Sky Sports 3 and 4.

Since Sky's inception it has held exclusive contracts with the six Hollywood studio majors for films within the subscription pay-TV window, as well as having contracts with other leading suppliers. It enjoys a position of market power because the film contracts are staggered and, as a wholesale purchaser, Sky is again in an unassailable position because it has no competitors. As a result, as contracts come up for renewal Sky has been able to negotiate successively lower fees. In August 2010 Ofcom referred this issue to the Competition Commission, noting that unless action was taken 'Sky will maintain and exploit its market power by restricting the distribution of its movie channels and exploitation of [subscription video on demand] SVoD rights'. (3) It is worth pointing out that Sky has effectively warehoused its SVoD film rights, which could be better exploited on interactive and broadband platforms.

The process by which BSkyB has effectively enclosed whole areas of film and television programming behind a subscription wall continued in July 2010 with Sky signing a £150 million, five-year deal to acquire exclusive UK rights to HBO's entire archive and the announcement, in October 2010, that it had offered significantly more than the BBC to acquire future series of *Mad Men*. (4)

In October 2010 the Office of Fair Trading (OFT) approved the £160 million acquisition of the Virgin Media TV portfolio of subscription channels (Living and Bravo) by BSkyB. This will also give BSkyB access to additional electronic programme guide (EPG) slots. BSkyB closed Bravo and increased the budget for Living by 25% as part of the broadcaster's bid to appeal more to female customers. (5)

3.2 Freeview. BSkyB had three channels on Freeview. This has increased to four following the acquisition of Virgin MediaTV.

3.3 Virgin Media's sale of the channels it owned also put BSkyB in a dominant position in the pay channel market, including third party channel carriage fees. As the gatekeeper, BSkyB can dictate terms for the third party channels it carries. These can take the form of incentives for channels to sign up exclusively on the BSkyB pay-TV platform, or arrangements which allow the third party channels it carries to be viable but from which BSkyB extracts most of the profits.

3.4 Sky News is one of three providers of UK TV news, supplying its own channels and Five. In the past it has also bid for the contract to supply news for ITV in competition with ITN. Sky News and the BBC are the only suppliers of news to UK national radio. In March 2009 Sky News increased the number of commercial radio stations it supplied with news content to over 300 (the vast majority of all commercial radio stations) following an agreement with Independent Radio News. (6)

3.4 We have already noted BSkyB's share of subscription revenue in the overall UK TV market. In terms of advertising sales in 2010 BSkyB will account for 14% of UK TV advertising. This will rise, through the acquisition of Virgin Media, to around 16% in 2011.

4.0 Media Pluralism

Ofcom's invitation to comment cites Section 58 of the Enterprise Act, which identifies public interest issues including 'sufficient plurality of persons with control of the media enterprises serving that audience' and 'sufficient media plurality in the functioning of a healthy and informed democratic society'. We consider these issues in relation to the News Corporation/BSkyB bid below.

4.1 Citizens' access to a variety of information sources and opinions is provided overwhelmingly through the media. Plurality in media requires a wide range of broadcasters and newspapers designed to appeal to a diversity of tastes, interests and viewpoints. Concentration of ownership can distort the flow of news and information so that certain viewpoints are excluded or under-represented. There is also the significant danger that immensely powerful media concentrated in a few hands will be used by their owners as a means of lobbying politicians to pursue policies which suit those owners' political and commercial interests. Murdoch's relations with successive UK governments clearly illustrate that this danger is a real one. The controversial role of Rupert Murdoch in UK politics has been dependent on the perceived power of his media and the belief in its ability to influence public opinion and voting intentions. Under successive Conservative and Labour governments Rupert Murdoch has been able to convert his immense media power into distinct political and commercial advantage.

This increasingly widely-held view is nonetheless sometimes challenged by those who argue it is old-fashioned, and that the internet has ushered in a diversity of news and information sources. The CPBF rejects this viewpoint. Whilst there is a great deal of diversity of information on the net, people mainly access news stories by going to the online sites of traditional news outlets, or to news aggregators or search engines which rely on traditional news organisation sources. The online dominance of established media groups means that the need for oversight of media ownership and regulation has to be maintained, not discarded.

4.2 News Corporation already owns more media in the UK than it is permitted to own in the US and Australia, where cross-media ownership laws prevent such concentration of media power. If News Corporation was to acquire the remaining 60.9% of BSkyB it would move from a minority shareholder to full ownership and gain important financial advantages which would allow it to destabilise other UK media groups and therefore have a direct impact on plurality.

4.3 Rupert Murdoch attacks regulation and champions competition but there are numerous examples where he has tried to weaken or destroy competitors. News International adopted a policy of 'predatory pricing' in 1993-94, reducing the prices of papers like *The Times* to twenty pence and *The Sun* to ten pence. It still does discount cover prices to boost market share and reduce circulation decline. This it can do via cross-subsidies from elsewhere in its vast media empire. And when in November 2006 Murdoch acquired a 17.9% stake in ITV for £940 million,

this was widely (and, in our view, quite correctly) interpreted as a direct intervention to block NTL's plans to buy ITV for £4.7 billion, which might have made it a more effective competitor to BSkyB.

Rupert Murdoch's media power has also played a thoroughly corrosive role in UK politics with governments, fearful of antagonising him, shaping policies to win or hold on to his support. High-profile speeches by Murdoch and his son James have relentlessly attacked both the BBC and forms of media regulation which BSkyB finds onerous, and these have been greatly amplified by hostile news coverage and editorial assaults in News International titles since 1986. Now the UK coalition government has imposed a six-year freeze on the licence fee up to the renewal of the charter in 2016. To the extent that the BBC's ability to sustain the size of its audiences and the quality of its programming across a range of genres is damaged, BSkyB will be the main beneficiary. As *The Guardian* columnist, Jonathan Freedland, put it succinctly, '...the BBC is a rival, and therefore an obstacle to News Corp's commercial ambitions. The smaller and weaker the BBC becomes, the more money News Corp can make'.

4.4 News Corporation's total control of BSkyB would, the CPBF believes, have a deeply disruptive impact as a result of the implementation of the following policies:

- Rupert Murdoch plays an active role as a media proprietor, exercising editorial control over the coverage of key policy debates or political events. (7) The loss of the independent BSkyB shareholders will give News Corporation even greater opportunity to influence the editorial coverage of Sky News and the content of other BSkyB channels. Rupert Murdoch views the current output of Sky News (which is required under UK law to be impartial) as 'BBC lite' and would like to develop a UK variant of Fox News. But even if the impartiality requirement remains in force, it will still be easy through the selection of news stories or the cross-promotion of stories from other News Corporation sites to introduce indirectly particular viewpoints and issues.

- broadband is encouraging the rapid convergence of press and television and the cross-promotion of stories from News International titles on BkyB and vice versa will inevitably happen, resulting in the merging into one stream of fact and opinion. Plurality will be diminished.

- products currently offered separately by BSkyB and News International could be bundled, discounted or provided without charge. It was a point made powerfully by Lord Puttnam in the recent House of Lords debate on Media Ownership: '...it is my belief that the opportunities to bundle together News Corporation's media assets, such as *The Times*, the *Sunday Times*, the *Sun*, the *News of the World*, Sky subscriptions, online movies from Fox, along with mobile access to all of them, are far, far greater than anything dreamt of when the plurality test was first introduced.' (*Hansard*, 4 November 2010: Column 1780).

Other media groups, without the revenue and global resources which News Corp can deploy, would find it extremely difficult to compete and News International's market share would inevitably increase.

4.5 Manuel Castells identifies in *Communication Power* the emergence of 'infocapitalists' who build self-reinforcing networks of business and political power by owning the production of information and knowledge. In a key chapter, 'Communication in the Digital Age', he dissects the fundamental transformations in mass communication over the past two decades which have led to the creation of global media groups and in order to sustain global growth and dominance 'the power holders in the network society must enclose free communication in commercialized and policed networks' (pp431-432). (8) The expansion of News Corporation's powerful cross-media media empire, epitomised by the proposed BSkyB acquisition by, is in our view a classic example of this process.

5.00 Journalism and Politics. In the invitation to respond (1.11) you seek views on 'any other issues you think we should consider'.

5.1 One such is the vital issue of journalistic standards. The planned acquisition of the whole of BSkyB coincided with renewed reports of phone hacking by *News of the World* reporters of politicians, footballers and celebrities. It exposed an ugly aspect of tabloid journalism, but the most disturbing aspect of this whole affair was that politicians openly stated that they were fearful of pursuing their enquiries because of the implied threat that News International journalists would start digging into their private lives

In the inaugural Margaret Thatcher lecture Rupert Murdoch made a brief reference to this affair when he said, '...our journalism is hard-driving and questioning of authority. And so are our journalists. Often I have cause to celebrate editorial endeavour. Occasionally, I have cause for regret.'

However, there is a substantial literature which demonstrates that, far from Murdoch championing challenging, independent critical journalism, journalistic endeavour is subordinated to his company's own national and international political or commercial considerations. It is widely accepted that a process of self-censorship results in News Corporation journalists avoiding subjects which contradict the views and interests of their owner, and actively promoting a pro-News Corporation agenda. But even more serious, as already noted, is the way in which Murdoch uses his newspapers to bestow favours on political parties which pursue policies which further his own business interests and to excoriate those which don't. Policies are then formulated specifically with an eye to how they will 'play' in the Murdoch press. This involves newspapers and politicians in what former *Sunday Times* journalist Bruce Page has called a 'dance of death for democracy'. In this respect it is particularly worrying that the Murdochs' increasingly strident attacks on the BBC and Ofcom in 2009 and 2010 appeared to find an echo in Tory pronouncements on these same subjects as the General Election approached, and that, in the months before that election, Murdoch switched his papers' support from Labour to Tory.

5.2 The BSkyB bid has rightly provoked extremely strong public opposition. It needs to be rejected on grounds of sustaining a modest measure media plurality in the UK, which is necessary for all the reasons outlined above.

Notes

- (1) News Corporation's proposed takeover of BSkyB: A submission to the Secretary of State by Claire Enders, CEO. Enders Analysis Ltd. p.11
- (2) Ibid, p.3
- (3) Ofcom. Premium Pay-TV Decision (4 August 2010. Available at: [movieshttp://stakeholders.ofcom.org.uk/consultations/movies_reference/statement/](http://stakeholders.ofcom.org.uk/consultations/movies_reference/statement/)
- (4) 'Hostile takeover: Sky poaches Mad Men' *The Guardian*, 1 October 2010. The report notes, 'One source claimed Sky was paying four times as much. Estimates of the value of the deal range between £5 and £10m although the amount Sky will pay depends on how long the show continues '.
- (5) 'Sky spreads its wings' *The Guardian*, 1 November 2010.
- (6) Enders (op.cit) p.6
- (7) In March 1989 Rupert Murdoch acquired the *News of the World*. The editor Stafford Sommerfield, who had previously edited the paper without proprietorial interference, noted, 'Murdoch's way was different. "I did not come all this way not to interfere", he said.' Stafford Sommerfield *Banner Headlines* (p 187). Andrew Neil, former editor of *The Sunday Times*, and a loyal Murdoch lieutenant for many years, noted in *Full Disclosure* (p 161): 'When you work for Rupert Murdoch you do not work for a company chairman or chief executive: you work for a Sun King. You are not a director or a manager or an editor: you are a courtier at the court of the Sun King...'
- (8) Manuel Castells, *Communication Power*. Oxford University Press: New York. 2009.

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