

RESPONSE BY THE CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM (CPBF) TO THE DCMS CONSULTATION ON THE PROPOSED NEWS CORPORATION TAKEOVER OF BSKYB.

1.1 THE CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM

The Campaign for Press and Broadcasting Freedom (CPBF) 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.cpbf.org.uk

1.2 The CPBF responded to the original Ofcom enquiry which reported on 31 December 2010. We argued in our evidence to Ofcom that the News Corporation/BSkyB takeover would 'represent a transformative shift in UK media ownership'. We had serious concerns about the impact of the proposed takeover on media plurality, but also more broadly on the competitive position of other UK media groups faced with the massive global resources (financial, marketing, programming) a merged News Corporation/BSkyB would be able to deploy. We also stressed the basic point, which goes right to the heart of media pluralism, that a merged company would be a powerful boost to the well-documented existing political and commercial power and influence which Rupert Murdoch, the chairman and CEO of News Corporation, already exerts within the UK.

1.3 We think this power and influence has been confirmed yet again. In particular we are puzzled and concerned by the decision taken by the Culture Secretary to substitute Ofcom's original advice, which he was initially minded to accept, that the merger would give rise to serious media plurality concerns and therefore be referred to the Competition Commission, with a process that involved direct negotiations with News Corporation.

1.4 The CPBF does not consider that the undertakings given by News Corporation in any way address the concerns we expressed in our original Ofcom submission. Indeed, events since News Corporation announced its intention to acquire the remaining 60.9% of BSkyB shares it does not own have highlighted more broadly the inadequacy of UK media ownership law and regulation.

1.5 Our particular concerns about the agreements with News Corporation contained in the consultation are detailed below. We conclude that the case should still be referred to the Competition Commission. Ofcom's report, delivered on 31 Dec 2010, and its subsequent further advice on 1 March 2011, both underlined the need for a wider review of the statutory framework to ensure plurality in the public interest in the longer term. We also strongly support such a review and state the reasons why below.

2.1 SCOPE OF THE CONSULTATION

2.1 The consultation document explicitly excludes 'any competition aspects of the proposed merger' (p1) and instead focuses on the details of undertakings given by News Corporation with regards to the spin-off of Sky News to Newco. We believe this makes the consultation fundamentally flawed because it narrows discussion down to the viability or otherwise of the undertakings regarding Newco and rejects any discussion of the far wider implications of the proposed merger. Put simply, we think the issue of Sky News, though important in terms of plurality of news, is marginal in terms of the overall impact the merger would have on UK media. From News Corporation's perspective the obligation to fund Sky News is a minor concession to gain full control of the profits BSKyB will generate in future years.

2.2 The consultation document also mentions that the European Commission, when it cleared News Corporation's proposed acquisition, 'concluded that the increased shareholding would not significantly impede effective competition'. (p1) That decision, however, applies to the impact of the merged company 'as it may affect trade between Member States' (Article 102, *TFES*) and does not directly address its impact on the domestic UK media market. Indeed, as the Commission point out in clearing the proposed acquisition (IP/10/1767, 21 December 2010) Article 21 of the EU Merger Regulation recognises that 'Member States may take appropriate measures, including prohibiting proposed transactions to protect legitimate interests, such as the plurality of the media.' In the evidence we presented to Ofcom we demonstrated that the proposed merger raised both competition **and** media plurality issues - the two aspects are inextricably linked. The undertakings made by News Corporation with regard to Sky News will only have a minimal impact in this regard and do not therefore in any way alleviate our concerns.

What is clear is that News Corporation wants BSKyB for two reasons. Firstly, the heavy investments in infrastructure, broadband and HD TV by the company are complete and profits are rising rapidly. Numis Securities forecasts operating profits of £1.2bn in 2012, compared with £780m in 2009. Secondly, the merged organisation will be a multi-media emporium able to bundle and cross-promote its products. It would completely dominate UK media, creating the media equivalent of a black hole whose sheer power can damage or destroy other media. In the CPBF's view the development of such a dominant media group would directly threaten media plurality. Yet none of these concerns, widely expressed in an unparalleled display of public disquiet over the past three months, have in our view, been addressed.

2.3 The failure to conduct a full Competition Commission review, and the narrow scope of the consultation, also means that there will be no consideration of the **future impact** of the merged company on other UK media companies. The *Daily Mail* Comment (4 March 2011), summarising the sheer scale of the merged company concluded, 'No other media company will have such leverage.' Yet any analysis of the future implications for media plurality, if that leverage is deployed against other media groups, has been marginalised when it should be a central concern.

3.0 NEWCO, SKY NEWS and NEWS CORPORATION

3.1 Newco, which will run Sky News under the proposals, will not be a viable independent news business. It will rely on News Corporation for over 85% of its revenue and gain access to viewers through the BSkyB platform. Newco's economic dependency will make it vulnerable if News Corporation exerts influence. The views of a regulator quoted in the *Financial Times* (Ben Fenton, 'Nebulous concept of plurality left off the contract', 4 March 2011) reinforce this point - Newco will be 'entirely dependent on a stipend from Rupert Murdoch'. Andrew Neil, former editor of *The Sunday Times*, gave a brutally frank assessment of the proposed arrangements when interviewed on television - money determines power and influence.

3.2 The Culture Secretary in his announcement of 3 March said under the proposed arrangements, 'In short, the editorial independence of Sky News would be better protected than it would have been not only if Sky News had formed part of the buyout of Sky shares, but even than it is right now.' We do not agree. In the *Financial Times* report quoted in 3.1 one expert view described the 10-page undertaking document as 'unbelievably sketchy'. Both the definition of independence and the safeguards for editorial independence in the undertakings are weak. Also the main board of Newco will continue to have News Corporation executives on it that will be able to exert influence over Sky News. Finally, the safeguards for editorial staff would place them in a difficult position in disagreements over editorial policy because they would have to take the risky step of putting themselves in dispute with their employer.

3.3 The fate of undertakings made by Rupert Murdoch to acquire media assets in the past are now well documented (see Note). However the undertakings in this case raise particular concerns. Apart from the fact that the CPBF thinks they lack robustness, monitoring compliance with them lies with the Culture Secretary rather than independent regulators. The point is well made in a letter sent to members of both houses by the Media Alliance: 'There are at least seven different ways in which the Culture Secretary can be required to approve or agree to behaviours governed by the undertakings, which make them incredibly susceptible to more or less implicit political interference in the future. In any event, all the undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco.'

3.4 Great emphasis has been placed by the Culture Secretary on the fact that, as part of the consultation, he has published the documents involved in negotiations with News Corporation, but some of the key elements of the arrangements have not been made public. In addition the OFT advised that the Culture Secretary should 'test further the viability and robustness' of the commitments made by News Corporation during the consultation process. We question how such a process could be undertaken with any rigour in the eighteen days allowed for the consultation.

3.5 For the above reasons we believe that the proposed undertakings should not be accepted, the consultation process stopped and the case handed over to the Competition Commission to conduct a full investigation.

4.0 MEDIA PLURALITY

4.1 There is a case to be made that the Culture Secretary did the best that he could within the existing framework of UK media law (the *Financial Times* makes it in its editorial, 'Why Hunt could not stop Murdoch', 4 March 2011). He inherited the Communications Act (2003) from the previous government, and the 'public interest' test, to assess whether media mergers would impact on plurality, was only inserted at a late stage, as a result of criticisms from the joint committee chaired by Lord Puttnam.

The News Corporation bid for BSkyB has highlighted that Britain's media ownership laws are unfit for purpose. As the *FT* editorial points out, 'A proper definition of media plurality is needed. It is illogical to regulate it only when there is a change of control. Factors such as organic growth and technological change do lead to big shifts in media consumption – and hence plurality.'

4.2 Ofcom has also urged a wider review of the current laws on media plurality on the grounds they do not work well. Its chief executive, Ed Richards, has argued for a more dynamic system in which a plurality review could be triggered because of a change in audience levels or viewing share. The CPBF strongly supports such a review, but also believes there are lessons to be learnt from the widespread public concern and opposition to the News Corporation takeover of BSkyB. People clearly care about a diverse and plural media, and that is why we strongly support the case for the establishment of a Media Commission which can gather evidence, develop policy proposals and feed these into debates on the framework of a new Communications Act which has the protection and promotion of media plurality at its core.

NOTE

What Price Undertakings? Rupert Murdoch and the London *Times*

In 1981, owner of the *News of the World* and *The Sun* since 1969, Rupert Murdoch acquired *The Times* and *Sunday Times*. Guarantees were given to John Biffen, Secretary of State for Industry, as part of his consent for Murdoch to acquire the papers. To assuage concerns about editorial independence and integrity Murdoch agreed to give extra powers to independent directors on the paper's board. The six independent members were charged with protecting the editors of the two papers from interference by the owner, having approval over the hiring and firing of editors, and preventing the owner interfering in reports which might conflict with his opinions or interests as the proprietor. Editors would have also have control over staffing decisions.

Frank Giles, editor *Sunday Times* 1981-83, commented that the board 'had very little power or will to protect the independence of the papers they were appointed to safeguard.' In his autobiography, *Sundry Times*, he describes how Murdoch ordered him in January 1982 to replace the paper's magazine editor with an editor from the *News of the World*.

In March 1982 Murdoch called Fred Emery, a former *Times* assistant editor, into his office and said he was considering firing *Times* editor, Harold Evans. Emery reminded Murdoch of his guarantee that editors couldn't be fired without the approval of the independent directors. Murdoch's response was, 'God, you don't take all that seriously, do you. Why wouldn't I give instructions to the *Times* when I give instructions to editors all around the world?'

Harold Evans, when editor of *The Times* asked Edward Pickering, 'What protection can I expect from you as a national director against improper pressures?' 'You have to remember, said the fifth independent national director, 'that I worked for Beaverbrook...that's the way things are.' (Harold Evans, *Good Times, Bad Times*, p404) Evans resigned after incessant pressure on 15 March 1982.