

## DEPARTMENT OF CULTURE MEDIA AND SPORT

### Review of the proposed takeover of BSkyB by News Corporation.

#### Submission from the Campaign for Press and Broadcasting Freedom.

#### INTRODUCTION

The Campaign for Press and Broadcasting Freedom (CPBF) is pleased to have the chance to comment on the proposed arrangements for the governance of Sky News.

Our view is that while the new clauses may make a tiny difference in preventing News Corporation enjoying editorial authority over Sky News, they come nowhere near addressing the problems raised by the proposed buyout of BSkyB and the matter must still, even at this late hour, be referred to the Competition Commission (CC).

#### 1. THE REQUIREMENTS ON NEWS CORPORATION (NC)

##### INDEPENDENT DIRECTORS

We share with others the widespread scepticism of their likely efficacy, not just because of what has happened with News International (NI) publications in the past, but because independent directors never have real authority in editorial matters. Rupert Murdoch has indeed sacked editors of The Times and Sunday Times without consulting the independent directors, in breach of his 1982 agreement, but The Observer also had an independent board, from 1981 when it was bought up by the oil company ARCO until 1996 when it was bought by Guardian Media. The directors were concerned when the intermediate owner, Tiny Rowlands dictated editorial policy quite openly, to his own business advantage, but they were never allowed even to meet, let alone to intervene. Editorial executives never take any notice of independent directors, regarding them as an irrelevance. In terms of such agreements as the current one they are no more than a fig leaf.

##### FINANCING NEWSCO

Much is made of the security of funding Newsco will enjoy, but there is no guarantee of the level relative to its operations. The other shareholders in BSkyB, apart from NC, will have no interest in investing in what will inevitably be a loss-making operation. They will no longer have an interest in the highly profitable BSkyB, but instead will be saddled with Newsco stock that will be, as we understand it, untradeable and

effectively worthless. They are likely at the least to demand a higher price for their present BSkyB holdings.

#### CROSS-PROMOTION

While it is sensible to require cross-promotion of Sky News on BSkyB, this requirement raises questions about the whole regulatory exercise of the last six months. The cross-promotion of NI media is one of the more serious plurality questions that the government has avoided having to address, and the Competition Commission must be allowed to do so.

#### DISCUSSION

Media cross-promotion can be a serious inhibitor of plurality and competition. It can have two effects:

One, to enable a company with a dominant market position unfairly to drive customers to its own media at the expense of alternatives, and

Two, in news and current affairs, to distort editorial values to give prominence to a company's commercial interests at the expense of regular editorial values.

This new requirement on BSkyB (and our understanding is that the present level of promoting Sky News is in any case relatively light) is an acknowledgement that the practice is essentially anti-plurality; the fact it must be sanctioned by the agreement indicates that the practice would not as a rule be encouraged.

Cross-promotion is already widely used between NI outlets, most notably the promotion of Sky programming - sport, movies, entertainment programmes, rather than news - in the Sun and News of the World. Sports writers frequently enthuse about the televising of events on Sky; Fox movies get pages of free publicity, with controversies generated around them - will they win an Oscar? - what are the stars up to in their private lives? - taking prominent space on news pages, brushing more important stories aside.

On occasions it has even affected the Times, with the well-documented case of a former Arts Editor resigning his post in protest at material promoting a Sky programme being foisted on his pages without his knowledge. The resignation of a senior journalist on a matter of principle is a rare enough event to signify that something is seriously wrong.

For the CPBF, such practices are just as serious an infringement of editorial principles as political bias, and

they threaten plurality by granting free advertising to already the biggest publisher and marginalising the smaller.

The Secretary of State not only shows no interest in this area; he has prevented the regulatory authorities, whose concern it should be, from even considering them, by narrowing the "plurality" question to the control of Sky News.

His reason is that is covered by competition law, and competition questions have been excluded from the reviews on the grounds that the European Commission decided at the outset of this process that the buyout would not infringe EU competition law.

The Secretary of State said in the Commons last week: "My concern is not with competition law, which is being considered by the European Commission, but with media plurality."

There is an obvious irony in a minister in a government that constantly states that British law must be made by the British, and not by bureaucrats in Brussels, using a decision by bureaucrats in Brussels as cover for his refusal to consider important matters raised by a takeover bid. Leaving that irony aside, the fact is that with media policy, plurality and competition are in some respects, relating to content, the same thing.

#### PLURALITY

Ensuring media plurality involves two elements: the number of competing media outlets and their relative strength - that none have any monopoly power. A NC/BSkyB merger would both reduce the number of companies owning media and increase the market power of NC already by far the biggest company. So there is right away an apparent restriction of plurality.

This has not been considered by the Secretary of State. He has taken the view that only news is involved, and therefore Sky News is the only issue. (Why not also Sky Arts, or Sky Atlantic?) He ignores the potential effects of NC's enhanced market power on media content.

As well as cross-promotion and the distortion of editorial values there are the near-monopolies NC would inherit in the areas of films and sport - the foundations of its market dominance and the precise areas of responsibility of the DCMS. With the relaxed regulations on product placement people on Sky programmes could be reading NI newspapers and complimenting them or promoting other Sky services, to the exclusion of others. The Murdochs would be moving towards a Berlusconi-like command over British culture. Yet the

Secretary of State for Culture Media and Sport has shown no concern over this.

The Secretary of State also said in Parliament: "James Murdoch and Rupert Murdoch will have less control of Sky News after this deal goes through than before." Perhaps, but they would have immensely greater control over the whole range of news, culture and entertainment media in the UK.

The EU did not consider these matters either. For them the question was whether NC would be anti-competitive in the European media market and they decided not. But their decision did not compel the UK government likewise to ignore them. Or are our media ownership policies really decided in Europe?

Competition issues then were said to concern such things as price-cutting through packaging services for subscribers and destabilising the markets for pay-TV, broadband internet provision, mobile telephony and online newspaper subscription. Clearly the buyout would have far-reaching effects in these areas, but there are other quasi-competition issues which are about plurality and which should have been covered in the review.

The Secretary of State has affirmed that it is not he but the regulators that have handled this matter, but it was he that confined the review to the Sky News question by soliciting the initial agreement with NC. Now he should follow the advice of the regulators and refer these questions to the Competition Commission.

#### THE FIT AND PROPER PERSON TEST

The CPBF does not need to rehearse the arguments raised around the News of the World phone-hacking scandal. We understand that the Secretary of State is concerned that, were he to refer the merger to the Competition Commission on these grounds, he would be liable to judicial review over the wording of the Enterprise Act that allows him to refer on only one ground.

Yet the application of such a test seems to be pressing. It is notable that even the Football Leagues apply it to the purchasers of soccer clubs, and the ownership of major national media is clearly of greater public importance than that.

This is an area the Secretary of State may well not wish to step into. The CPBF recognises the difficulties, but the solution would be for the government to refer the merger to

the CC under the existing plurality remit, and let the CC  
conduct and answer for its own enquiry.

7 July 2011.

Campaign for Press and Broadcasting Freedom  
23 Orford Road  
Walthamstow  
London E17 9NL.  
[www.cpbf.org.uk](http://www.cpbf.org.uk)