



CPBF
23 Orford Road
London E17 9NL
freepress@cpbf.org.uk
07729 846 146

Ms. Anne Lambert, Inquiry Chair
Fox/Sky Merger
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

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Re: Response to Provisional Findings in Sky/Fox Merger

Dear Ms Lambert

Thank you for opportunity to respond to the Provisional Findings, supplementary to the response on remedies we sent a week ago. We will concentrate on the sections concerned with commitment to broadcasting standards on the part of 21st Century Fox, since we have no serious issues with those concerning media plurality. We are in accord with your conclusion that the transaction would act against the public interest by giving too much control to the MFT over public opinion and the political agenda in the UK, but we are concerned that in finding that Fox has a genuine commitment to upholding UK broadcasting standards you have failed to appreciate the means by which the MFT exercises this control.

It is not the mere fact of ownership that brings the control over the political agenda but the nature of the material that is published, and there is ample evidence from Fox News in the USA that its practice in this regard is in wilful breach of the standards that would be required by Ofcom's code in the UK. We do not need to reiterate the substance of our submissions to date but wish to set out in what ways the provisional response does not address the problems we raised in them, and to urge you to reconsider these questions for your final conclusions.

The provisional response states: "The main issues of concern raised by third parties related to (i) misconduct at News Corporation (which was split in 2013 into Fox and News Corp) prior to the Leveson Inquiry in 2011 in connection with phone hacking, and (ii) more recent allegations of sexual harassment and racial discrimination at Fox News in the US ..." This ignores a third and more relevant issue, which is that of the actual standard of Fox's broadcasting. This was raised in submissions from Avaaz and Ed Miliband et al, as well as from the CPBF, yet is unmentioned in the provisional findings.

Instead we have the inconclusive evidence of the findings of various regulators around the world in jurisdictions where Fox and Sky are broadcast. None have the same regime as the UK, and all they have in common is that in practically every case the audience and reach of the broadcasts are small and inconsequential for the broadcasting and political environments concerned.

When considering broadcasting standards, what is most relevant is what appears on the screen. That is what viewers see and what influences the political agenda. It is much more relevant than whether or not there are managers with the word "compliance" in their titles, or nominal "policies" concocted, in last year's case of Fox News at least, for the purpose of gratifying UK regulators; whatever the procedures Fox News adopted in that instance, the effect on its broadcasting was not apparently great,

with an increase in complaints received by Ofcom. We note Fox's response that some of these complaints were effectively vexatious, relating to the fact of the regulatory process. Nevertheless, Ofcom found them to be substantial.

As your findings note, five of Fox News's breaches of the Broadcasting Code concerned matters of political or industrial controversy relevant to the UK, which required it to offer some degree of balance and impartiality. It ignored that requirement; an incomprehensible approach for UK broadcasters.

You also note that all ten breaches recorded against Fox News were related to the non-news "talkshow" programming, the regulation-busting nature of which the CPBF has warned against at every stage of this inquiry.

But as the CMA itself says (paragraph 123) Fox News is produced for US audiences, not the UK, and it is the affect on the US political agenda that should be considered when assessing the extent to which an MFT-controlled entity is likely to approach broadcasting standards. It is well enough known that the constant reiteration of "fake news" stories and the hours on end of highly partisan programming on Fox News have been a central component of the growth of Tea Party and Alt-right political movements and the Presidential triumph of Donald Trump. This is not to take a partisan position; merely to point out that Fox makes no attempt at balance, fairness or impartiality, the foundation stones of the Ofcom code.

The US regulatory environment is markedly different from the UK's for reasons that are acknowledged in the provisional findings (paragraph 15.7), so Fox News's partisan conservative programming does not offend against any regulation. There has been no US code to comply with since the Fairness Doctrine was killed off in 1987, so the exercise of examining Fox News's compliance or non-compliance with different regulators cannot be applied in the state where it would be most instructive. What is clearly required is the examination of Fox News output by Ofcom's required standards, yet this has not even been attempted. We strongly urge you to do so for your final findings.

We'd also like to highlight that whilst your provisional findings have focussed primarily on the compliance record of 21CF and Sky, in their letter to the parties on 12 September 2017^[1] DCMS made it quite clear that "In order to apply compliance arrangements effectively, a company must have an **internal culture that takes compliance issues seriously**" and that "it is seems clear from the inclusion of the broadcasting standards ground in the Enterprise Act 2002 and the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 that Parliament intended there to be a meaningful ex ante control, i.e. in addition to the ex post regime."

Moreover, such a culture is evidently lacking within MFT-controlled enterprises. As noted by the House of Commons, Culture, Media and Sport Committee report into News International and Phone-hacking^[2]:

"Corporately, the News of the World and News International misled the Committee about the true nature and extent of the internal investigations they professed to have carried out in relation to phone hacking; by making statements they would have known were not fully truthful; and by failing to disclose documents which would have helped expose the truth. Their instinct throughout, until it was too late, was to cover up rather than seek out wrongdoing and discipline the perpetrators, as they also professed they would do after the criminal convictions. In failing to investigate properly, and by ignoring evidence of widespread wrongdoing, News International and its parent News Corporation exhibited wilful blindness, for which the companies' directors—including Rupert Murdoch and James Murdoch—should ultimately be prepared to take responsibility"

We therefore ask that you further examine to what extent, given all the evidence available, can 21CF be considered to have an “internal culture that takes compliance issues seriously” above and beyond its record of historical compliance with UK broadcasting regulations.

Finally, we note, of course, that far more evidence about the internal culture within MFT-controlled enterprises would be made available upon the completion of the promised Part 2 of the Leveson Inquiry “into the extent of unlawful or improper conduct within News International”^[3] and would argue that no clearance of the Transaction on broadcasting standards terms should be given unless and until that inquiry’s work has been completed.

Yours sincerely,

Josef Davies-Coates
National Organiser, CPBF

Notes:

[1]

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644186/DCMS_letter_to_Sky_Fox_12_Sep_2017_1.pdf

[2] <https://publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/903/903i.pdf> p84

[3]

<http://webarchive.nationalarchives.gov.uk/20140122144942/http://www.levesoninquiry.org.uk/about/terms-of-reference/>