

**From:** KAYE VICTORIA [REDACTED]  
**Sent:** 28 June 2011 19:59  
**To:** Darbon, Cerry:CO (LN)  
**Cc:** BRAND STUART; Bavasso, Antonio:CO (LN); Long, Dominic:CO (LN)  
**Subject:** RE: News Corporation/BSkyB Merger (0012561-0000367)  
**Categories:** Copied to Virtual File  
**FolderLibrary:** CO  
**FolderNumber:** 12977139  
**MatterInformation:** MATTER\_ID:0000367|CLIENT\_ID:0012561

Dear Cerry/Antonio,

Further to my email below, I confirm that, if the Secretary of State's decision is to conduct a further period of consultation on the revised UILs, then he would not propose to publish the Carriage and Brand Licensing Agreements, but, as you have confirmed agreement to this, would propose to publish the draft Articles of Association.

I look forward to hearing from you in relation to the point below on the proposed redaction of the revised UILs, as this obviously also tracks into the proposed redactions of the OFT's report, and we are keen to resolve this as swiftly as possible.

Regards,

Victoria

Victoria Kaye  
Legal Advisers to the Department for Culture, Media and Sport  
Email: [REDACTED]

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**From:** KAYE VICTORIA  
**Sent:** 28 June 2011 16:07  
**To:** Cerry.Darbon [REDACTED]  
**Cc:** BRAND STUART; Antonio.Bavasso [REDACTED]; Dominic.Long [REDACTED]  
**Subject:** RE: News Corporation/BSkyB Merger (0012561-0000367)

Dear Cerry/Antonio,

Thank you for this. I hope to be in a position to let you know the Secretary of State's position in relation to the Carriage and Brand Licensing Agreements by close of play today.

In relation to your proposed redactions of the UILs, we have noted the proposal in relation to paragraph 5.3(iii). We think it preferable, if the Secretary of State so decides, to re-consult with as few redactions as possible, particularly in relation to important parts of the UILs. You state below that disclosure would harm your client's legitimate commercial interests. I would be grateful, as with the Agreements, if you could set out what harm you assess would follow from such disclosure.

I also note that in the version of the UILs attached to your email the date of November 2014 appearing in paragraph 5.1(iv) was redacted, whereas the date was included in the version of the UILs dated 14 June 2011. Could you please clarify?

07/04/2012

It would be of immense assistance if you could provide us, once these matters are resolved, with a mark-up version of the UILs showing the changes made from the consultation version to date, as, if the Secretary of State decides to re-consult, we would want to do so on the basis that changes to the UILs were clearly marked.

In relation to the redactions from the Ofcom report, whilst this is not our document, our view is that it would be clearer if there were some indication of what had been redacted from paragraph 29, so the paragraph would read "Internationally, Newco would also have opportunities for diversification, including" and then be snipped.

Regards,

Victoria

Victoria Kaye

Legal Advisers to the Department for Culture, Media and Sport

Email: [REDACTED]

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**From:** Cerry.Darbon/ [REDACTED]  
**Sent:** 27 June 2011 22:17  
**To:** KAYE VICTORIA  
**Cc:** BRAND STUART; Antonio.Bavasso/ [REDACTED]; Dominic.Long/ [REDACTED]  
**Subject:** RE: News Corporation/BSkyB Merger (0012561-0000367)

Dear Victoria

I attach versions of the OFT and Ofcom reports in which those parts of the reports which News believes to be confidential have been excised. News would also request that paragraph 5.3(iii) be redacted from the published version of the UILs (as attached).

<<CO-#14370097-v1-Redacted\_version\_of\_14\_June\_draft\_UIL.DOC>> <<CO-#14373295-v1-Ofcom\_Report\_-\_News\_Redaction\_Requests.PDF>> <<CO-#14362030-v2-OFT\_Report\_-\_News\_Redaction\_Requests.DOC>>

News considers that disclosure of the information which has been removed from these documents would harm its legitimate commercial interests.

I can, however, confirm that News has no objection to publication of the Articles of Association in their entirety.

News remains very concerned at the suggestion that the Carriage and Brand Licensing Agreements might be made public when there are no grounds for arguing that this is necessary and there are very good reasons to avoid publication of the agreements in order to protect the legitimate commercial interests of the companies involved.

News is aware of no other regulatory context where it would be common practice to force detailed commercial documents to be publicly disclosed. On the contrary, to the extent they are referred to at all, it is common practice for competition authorities and other regulatory authorities to redact any references to commercial terms of current/future commercial agreements from published reports.

The terms of existing/future commercial agreements is a clear example of documents containing information which is commercially sensitive, the disclosure of which is likely to harm the legitimate interests of the companies involved. In this case, for example:

- Disclosure of the Carriage Agreement would prejudice Sky's existing and future arrangements with other broadcasters for the distribution of their content on its platforms – other broadcasters might seek to rely on the Sky News agreements as precedent for more beneficial outcomes to negotiations.
- Disclosure of the Brand Licence Agreement would prejudice Sky's ability to exploit its brand in other territories if the terms of the arrangements are known to other potential licensees.

- Disclosure of either agreement would prejudice Sky News/NewCo in relation to negotiations with third parties on syndication and other arrangements – NewCo's negotiations with third parties would be conducted in an environment where the scope of their rights and duties would be known to all parties. For example, a third party negotiating a content syndication deal would be aware of the terms under which Newco could offer such syndication and would use this as the basis for negotiation.
- Disclosure of either agreement would prejudice NewCo's future negotiations with third party platforms since those other platform operators would be aware of the terms upon which Sky News is being made available on Sky's platform and would be likely to use this as a starting point for negotiations with NewCo.

Moreover, as noted in my email of 24 June, News considers that "redacted"/non-confidential versions of those documents, in so far as they could realistically be prepared at all, would need to be so heavily redacted as to be meaningless.

News therefore requests again as a matter of urgency that DCMS confirm the Secretary of State's position on this matter.

Kind Regards

Antonio Bavasso/Cerry Darbon

Cerry Darbon

Counsel

Allen & Overy LLP

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From: KAYE VICTORIA [REDACTED]  
Sent: 27 June 2011 13:02  
To: Darbon, Cerry:CO (LN)  
Cc: BRAND STUART; Bavasso, Antonio:CO (LN); Long, Dominic:CO (LN)  
Subject: RE: News Corporation/BSkyB Merger (0012561-0000367)

Dear Cerry/Antonio,

Thank you for your email.

I note your assertion that disclosure of the Carriage and Brand Licensing Agreements (even on a non-confidential basis) would harm the legitimate business interests of News/Sky and/or Sky News (by which I infer you mean Newco) in the longer term. In order for the Secretary of State to fully consider this, I should be grateful if you could let me know what you assess the harm to be.

Your email does not refer to the proposed Articles of Association of Newco, and I assume therefore that similar considerations do not apply to that document and that you will be in a position to provide non-confidential versions of the Articles.

For planning purposes, it would be of great assistance if you could let me know when you anticipate being in a position to agree non-confidential versions of the OFT and Ofcom report.

Regards,

Victoria

Victoria Kaye

Legal Advisers to the Department for Culture, Media and Sport

Email: [REDACTED]

[Tel: [REDACTED]]

From: Cerry.Darbon/ [REDACTED]

Sent: 24 June 2011 19:50

To: KAYE VICTORIA

Cc: BRAND STUART; jpalker/ [REDACTED]; Andrea.Appella [REDACTED]

Antonio.Bavasso [REDACTED]; Dominic.Long [REDACTED]

Subject: RE: News Corporation/BSkyB Merger (0012561-0000367)

Dear Victoria

News is very concerned about the suggestion that the Secretary of State might want to publish the Brand Licence and Carriage Agreement.

These documents are clearly very sensitive commercial documents which are confidential to News and to Sky and the disclosure of these documents would harm News/Sky and/or Sky News' legitimate business interests in the longer term. That such information should be excluded from disclosure is provided for in section 244 of the Enterprise Act 2002. It would be unprecedented for sensitive commercial documents of this nature to be disclosed during a merger review process.

News submits that the disclosure of these documents is not necessary or even desirable for the Secretary of State to properly carry out his functions. The Secretary of State has heard views from OFT, Ofcom and from independently instructed legal advisors. For DCMS to, in effect, solicit input from any additional third party who wishes to comment will not improve the administrative process.

News also considers that "redacted"/non-confidential versions of those documents, in so far as they could realistically be prepared at all would need to be so heavily redacted as to be meaningless.

News wishes to avoid any further delay in the process but it cannot accept a request that would damage the business of both Sky and NewCo for no reasonable public interest consideration. It would therefore requests that DCMS confirms its position as a matter of urgency.

Regards

Antonio Bavasso/Cerry Darbon

Cerry Darbon

Counsel

Allen & Overy LLP

[www.allenoverly.com/antitrust](http://www.allenoverly.com/antitrust)

<<http://www.allenoverly.com/AOWEB/AreasOfExpertise/ExpertiseHub.aspx?aoofID=38891&selectedPage=Antitrust%20and%20EU&prefLangID=410>>

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From: KAYE VICTORIA [REDACTED]

Sent: 24 June 2011 14:19

To: Bavasso, Antonio:CO (LN); Long, Dominic:CO (LN); Darbon, Cerry:CO (LN)

Cc: BRAND STUART

Subject: News Corporation/BSkyB Merger

Dear Antonio,

As you're aware, the Secretary of State has yet to make a decision as to how to proceed to the next stage of this matter, having only just received the OFT and Ofcom's reports (as discussed with Dominic, the Secretary of State was out of the country during the middle part of this week). We've already asked you to consider redactions to the OFT and Ofcom reports, which the Secretary of State will, we anticipate, wish to publish whatever decision he makes.

If the Secretary of State decides to consult on the revised UILs for a further period of time he may wish to, in line with his desire for maximum transparency, also publish the carriage and brand licence agreements and the draft Articles of Association. I should emphasise that a decision on this basis has not yet been made, but I'd be grateful if you could prepare redacted versions of these documents in case the Secretary of State does make this decision.

I'd be grateful if you could prepare redactions of all the documents by midday on Wednesday. If this is not possible, please could you let me know as soon as possible, and also let me know when you would be able to prepare redactions by.

Regards,

Victoria

Victoria Kaye

Legal Advisers to the Department for Culture, Media and Sport

Treasury Solicitor's Department |2-4 Cockspur Street |London |SW1Y 5DH

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