

SS. E 01

Jeremy Hunt

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**Vince comments on Sky**

1 message

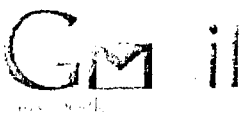
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Jeremy Hunt

21 December 2010 16:10

To: Andy Coulson

Could we chat about this? Am seriously worried Vince will do real damage to coalition with his comments...



SS. E. 02

Jeremy Hunt



DCMS lawyer

1 message

Jeremy Hunt

21 December 2010 17:30

To: Edward Llewellyn

From: KILGARRIFF PATRICK

Sent: 21 December 2010 17:24

To: BEEBY, Sue; SMITH, Adam;

Cc: ZEFF JON; PATEL RITA; MARTIN LINDA;

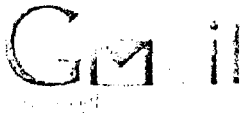
Subject: RE: URGENT Competition policy



When did JH say it? I assume it was shortly after News Int announced its intention to buy out the other shareholders in Sky. Therefore at a time when JH was not responsible for policy in this area. If so, it is not helpful and tends towards an element of pre-judging the issue. That said, the view is far from definitive as is demonstrated by the wish not to second guess decision making by regulator and "it isn't clear to me" so unhelpful and enough to draw comment and perhaps challenge but probably not fatal when a well reasoned decision is made with conclusions based on all the relevant evidence.

Patrick





SS.E.03.

Jeremy Hunt

**FW: Murdoch**

2 messages

**HUNT, Jeremy**

6 January 2011 13:31

To: Jeremy Hunt

Hi Jeremy,

You have received a similar email from Don Boyd offering advice. I was going to ask you how you wanted me to reply to these and other BSKyB emails earlier but I just missed you at DCMS. The private office has some letters for you along with a few emails to sign off - in particular there is letter from the SWS Liberals which I have drafted a reply to.



Office of Rt. Hon. Jeremy Hunt MP  
Member of Parliament for South West Surrey  
Secretary of State for Culture, Media and Sport

-----Original Message-----

From:

Sent: 23 December 2010 11:18

To: HUNT, Jeremy; HUNT, Jeremy

Subject: Murdoch

Jeremy,

the News Corp/BSkyB business has all the makings of a hot potato. I wonder if it's helpful to you to have/be seen to have some independent and objective advice. If you think it might be (and assuming, rather presumptuously, that you might think I could be useful) I believe I could be able to make myself available, subject to checking with one or two colleagues.

Just a thought, in case it's helpful. Happy Christmas anyway!

Nicholas Shott  
Vice Chairman, European Investment Banking  
Head of UK Investment Banking

50 Stratton Street  
London W1J 8LL

Switchboard: +44 (0)20 7187 2000



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**Jeremy Hunt**

6 January 2011 15:27

To: "HUNT, Jeremy"

Hi Matt



Thanks for these. Please draft replies along the following lines

Dear Nick

Thank you so much for your kind offer - hugely appreciated. I fear, however, your wife would never look me in the eye if I prevailed upon you once more! The people I am able to talk to are quite narrowly defined by what lawyers consider would or would not prejudice a judicial process (I am not supposed to consult the Prime Minister for example) so probably at this stage I will pass on your generous offer, but the thought is much appreciated.

Best wishes and Happy New Year

Jeremy

On 6 January 2011 13:31, HUNT, Jeremy [redacted] wrote:

Hi Jeremy,

You have received a similar email from Don Boyd offering advice. I was going to ask you how you wanted me to reply to these and other BSKyB emails earlier but I just missed you at DCMS. The private office has some letters for you along with a few emails to sign off - in particular there is letter from the SWS Liberals which I have drafted a reply to.



Office of Rt. Hon. Jeremy Hunt MP  
Member of Parliament for South West Surrey  
Secretary of State for Culture, Media and Sport

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Sent: 23 December 2010 11:18  
To: HUNT, Jeremy; HUNT, Jeremy  
Subject: Murdoch

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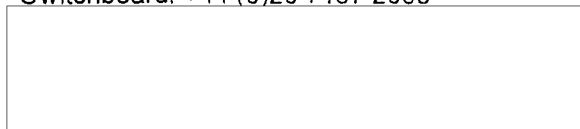
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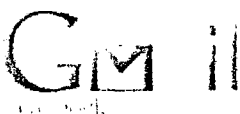
Switchboard: +44 (0)20 7187 2000



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SS E. 04  
Jeremy Hunt

## Fw: Fwd: your question regarding 'other issues'.

4 messages

Peter Chadlington

3 March 2011 14:47

To: jeremy

This might be useful.

From

Sent: Thursday, March 03, 2011 02:26 PM

To: Peter Chadlington

Subject: Fwd: your question regarding 'other issues'.

I thought you might find it helpful to run through a few of the other issues that today's statement doesn't cover.

The Ofcom correspondence refers several times to the 'deficient' legislation which does not allow them to address the crucial issue of Market dominance - they suggest an urgent review of the legislation to address this. Hopefully Jeremy's statement will refer to this and suggest a timetable.

Anyway the laundry list below, whilst not complete, gives you some idea of where we need to start looking.

### 1. Advertising revenues

- The transaction would enable NewsCorp and BSkyB to combine their sales houses into one and cross-subsidise one set of inventory with another. Sky Media (the advertising sales house of BSkyB) may be able to win campaigns at the expense of competitors by bundling advertising with the UK publications of NewsCorp. The sheer scale and potential for cross-subsidisation will enable them to take share from the market at competitors' expense.
- Bringing BSkyB under the control of NewsCorp would also allow the combined entity to strike global advertising deals with advertisers such as Proctor & Gamble. The ability to offer a discount across the scale of a global sell would enable them to take a greater share of advertising revenues at the expense of others.

### 2. Cross-promotion

- It would clearly be in the new entity's interest to use the extensive media outlets of NewsCorp (eg. *The Times*, *The Sun*, *News of the World*, *The Sunday Times*) to cross-promote BSkyB's television platform, channels, broadband provision and other services.
- The cross-promotional opportunities across the NewsCorp portfolio could be expected to extend beyond obvious endorsements of the type above, to include, for example, the replacement of newspaper DVD cover mounts with a code to watch Sky

Movies for free. Equally, the UK publications of NewsCorp could be used far more extensively to market against established and emerging TV or broadband platforms which might be seen by NewsCorp as actual or potential competitors to BSkyB businesses, such as Virgin Media, BT Vision or TalkTalk.

- The sheer scale of the combined operations of the two businesses, coupled with the high levels of control of highly valued content (including but not limited to sports and movie rights, both of which have attracted ongoing competition concerns), suggests that such combined campaigns could have significant impact.
- The effect of this scale of cross-promotion, on top of Sky's existing marketing budget (over £1 billion for the 12 months to June 2010) would present a real challenge to broadcasters and newspapers to compete for market share, making it harder to provide plurality.

### 3. US programme acquisitions

- UK broadcasters currently bid for and acquire programme rights from Fox Studios in the US, which is wholly owned by the NewsCorp group. Fox Studios is a large supplier of US content to broadcasters.
- Currently, the economic interest of Fox to maximise its returns from the sale of these rights incentivises it to go through a market rate bidding process and award the UK rights to the highest bidder.
- If this transaction were to proceed, the ability to cross-subsidise means that Sky could pay below market rates for such rights meaning that other broadcasters could get locked out of a valuable and desired source of content supply.
- For commercial PSBs, this would have a negative impact on their ability to invest in UK content. Commercial PSBs rely on commercially valuable content such as US acquisitions to fund public service programming that does not command high advertising revenues. Any reduction in the commercial PSBs' ability to acquire US programming at fair prices risks revenue loss and a decline in public service delivery.

### 4. Limiting innovation and discouraging new entry

- A NewsCorp/BSkyB transaction would wholly align the commercial interests of newspaper and television businesses and allow the entity, for example, to bundle newspaper subscription services with TV and/or broadband packages to create a compelling consumer proposition.

- The exclusive ability to use established mass market assets from one part of the business in order to protect operations in another would make it harder for new entrants – such as IPTV providers – not only to acquire customers but also to retain them.



Jeremy Hunt

3 March 2011 16:24

To: Peter Chadlington

Thanks [redacted] Actually am trying to have a phone conversation with him anyway as I know he will be on the media a lot. The main thing is that I am going to try to resolve his first point in a new comms bill.

J

On 3 March 2011 14:47, Peter Chadlington <Peter.Chadlington@[redacted]>

This might be useful. [redacted]

From: [redacted]

Sent: Thursday, March 03, 2011 02:26 PM

To: Peter Chadlington

Subject: Fwd: your question regarding 'other issues'.

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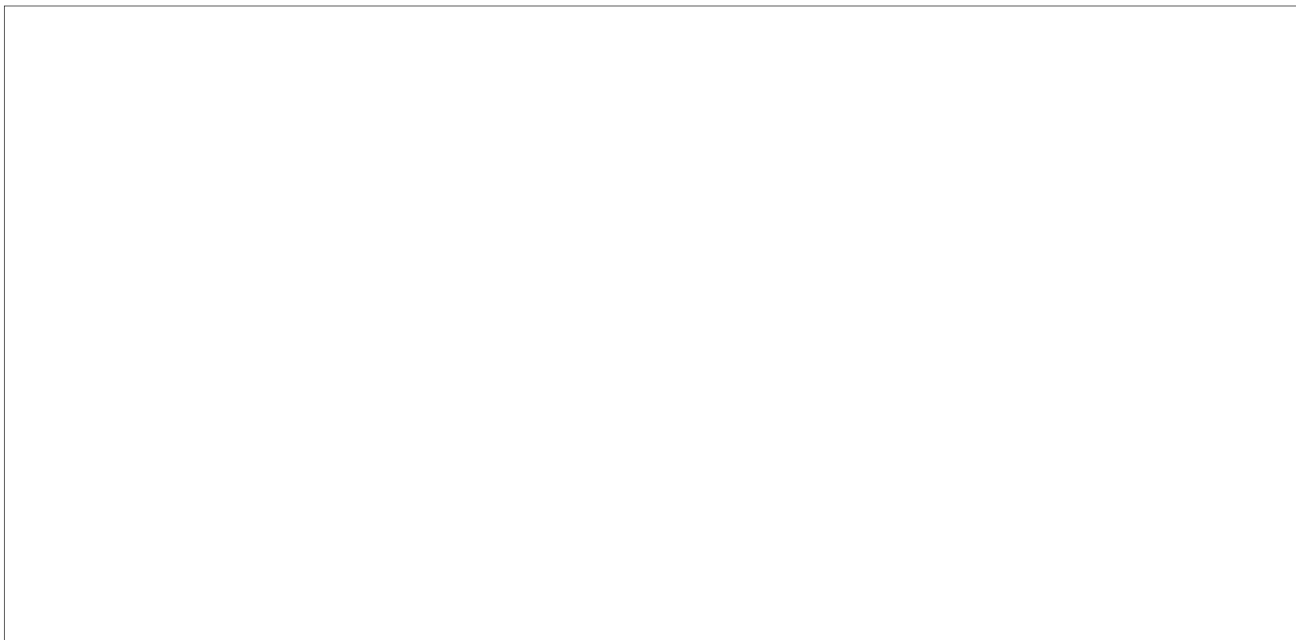
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Peter Chadlington  
To: Jeremy Hunt <

3 March 2011 16:26

He has fled to the USA. He told me this morning that you had tried to contact him but he was going to USA for ten days. Peter

[Redacted]  
**From:** Jeremy Hunt  
**Sent:** 03 March 2011 16:25  
**To:** Peter Chadlington  
**Subject:** Re: Fw: Fwd: your question regarding 'other issues'.

Thanks [Redacted]. Actually am trying to have a phone conversation with him anyway as I know he will be on the media a lot. The main thing is that I am going to try to resolve his first point in a new comms bill.

J.

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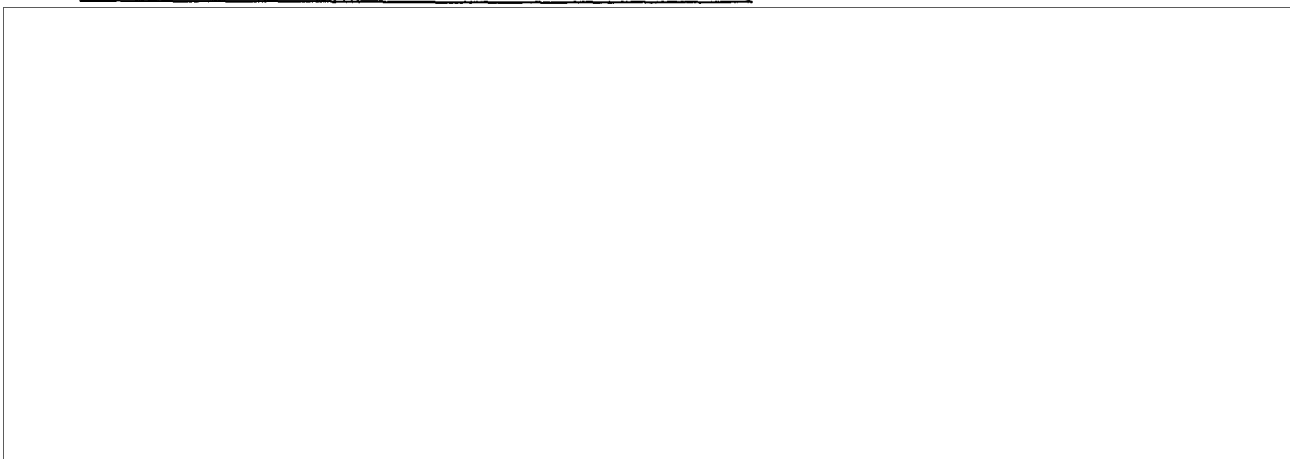
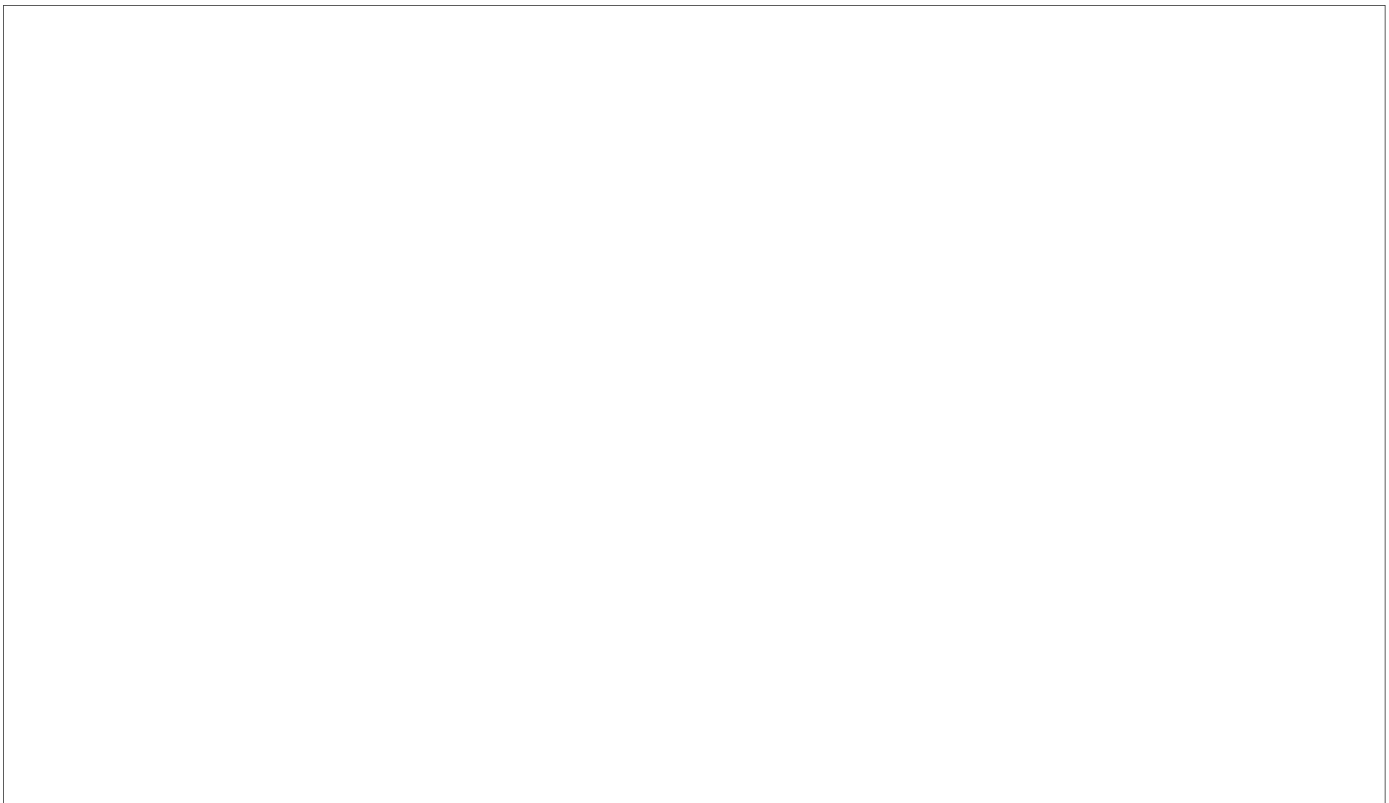
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Jeremy Hunt



3 March 2011 16:29



To: Peter Chadlington <[redacted]>

Well maybe no bad thing, although weird he should be going somewhere where Murdoch even stronger!

On 3 March 2011 16:26, Peter Chadlington <[redacted]> wrote:

He has fled to the USA. He told me this morning that you had tried to contact him but he was going to USA for ten days. Peter

From: Jeremy Hunt <[redacted]>  
Sent: 03 March 2011 16:25  
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[redacted]

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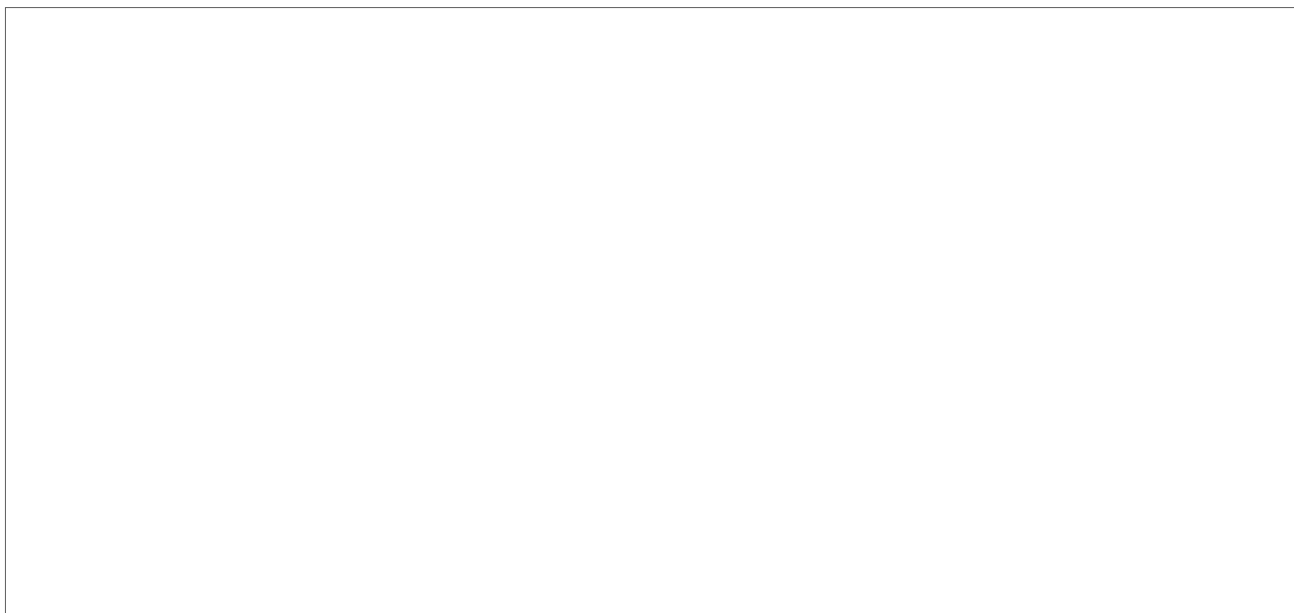
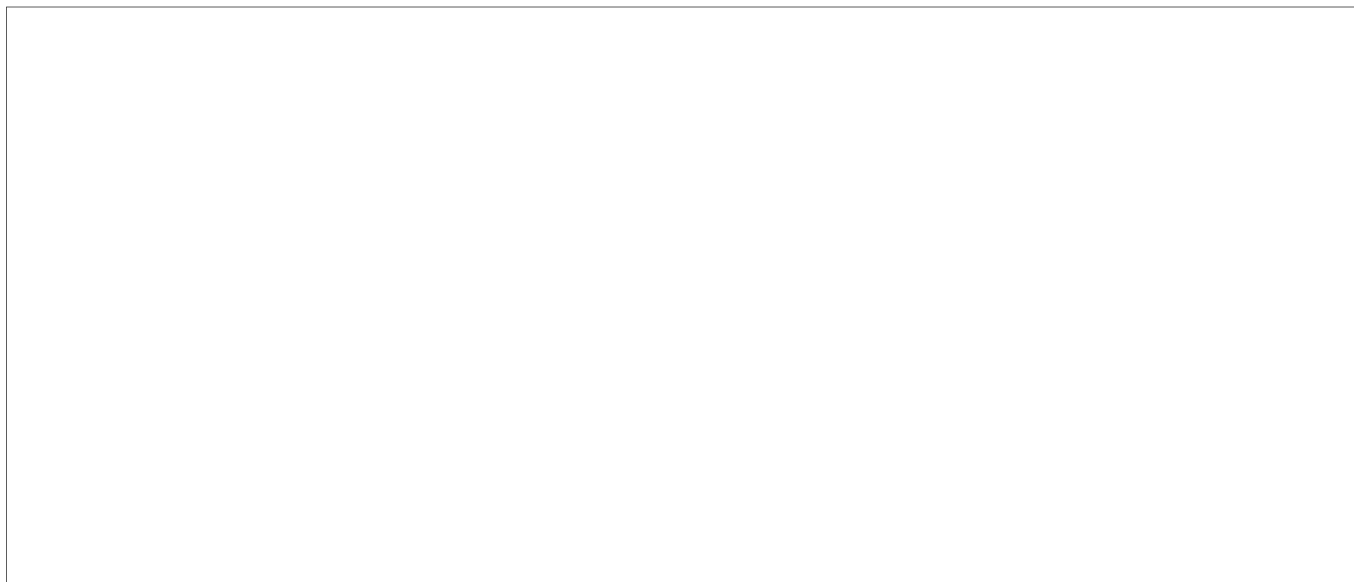
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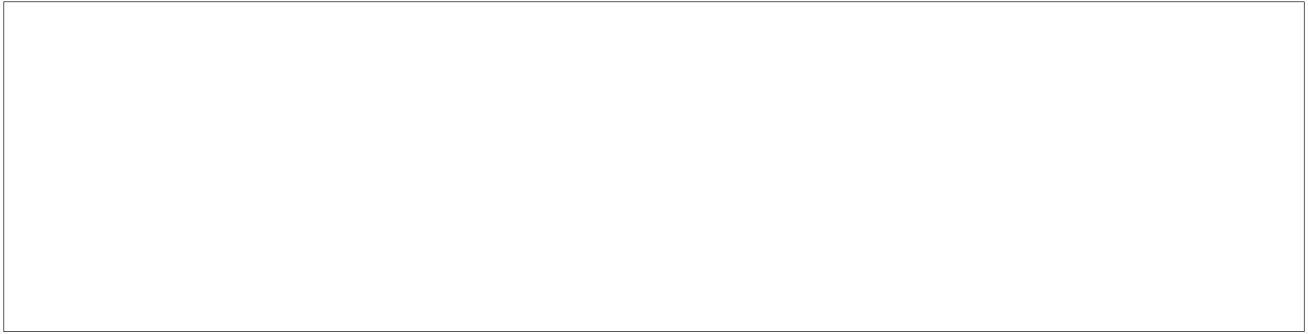
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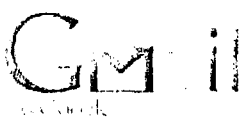
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SS. E. 05

Jeremy Hunt

[Redacted]

**Fw: BSKyB**

4 messages

**Peter Chadlington** <[Redacted]>

5 March 2011 14:12

To: jeremy <[Redacted]>

What shall I say?

**From:** [Redacted]

**Sent:** Saturday, March 05, 2011 02:06 PM

[Redacted]

Peter

Chadlington; <[Redacted]>

[Redacted]

[Redacted]

**Subject:** BSKyB

Dear friends and colleagues,

[Redacted]

Since giving various media interviews on Thursday, I have been repeatedly asked on what basis I criticised the Ofcom report on the NewsCorp/BSkyB merger. For those of you who do not regularly read opendemocracy.net or lse.ac.uk.mediapolicyproject, I attach the note I prepared for the LSE seminar on Wednesday. If you find any errors or weakness in argument, please do not hesitate to alert me.

Kind regards,

[Redacted signature]

[Large redacted area]

 **The Ofcom report on the NewsCorpKGrevised.docx**  
41K

**Jeremy Hunt** [Redacted]  
To: Peter Chadlington [Redacted]

5 March 2011 14:20

Don't think you need to. As ever he makes some good points!

[Quoted text hidden]

[Quoted text hidden]

<The Ofcom report on the NewsCorpKGrevised.docx>

**Peter Chadlington** [Redacted]  
To: jeremy [Redacted]

5 March 2011 14:36

I agree. [Redacted] I just wondered if there were one or two points you might like me to make to help things along. If not - just interesting.

**From:** Jeremy Hunt [Redacted]  
**Sent:** Saturday, March 05, 2011 02:20 PM  
**To:** Peter Chadlington  
**Subject:** Re: BSKyB

[Quoted text hidden]

**Jeremy Hunt** [Redacted]  
To: Peter Chadlington <[Redacted]>

5 March 2011 14:44

[Redacted footer line]

V helpful. Think the main point to make to him when u see him is that flaws or no flaws in the original Ofcom report the only way to avoid a successful judicial review was if Ofcom were willing to accept the solution finally offered

[Quoted text hidden]

[Quoted text hidden]



SS. E. 06

Jeremy Hunt

**FW: JHLetterFinal**

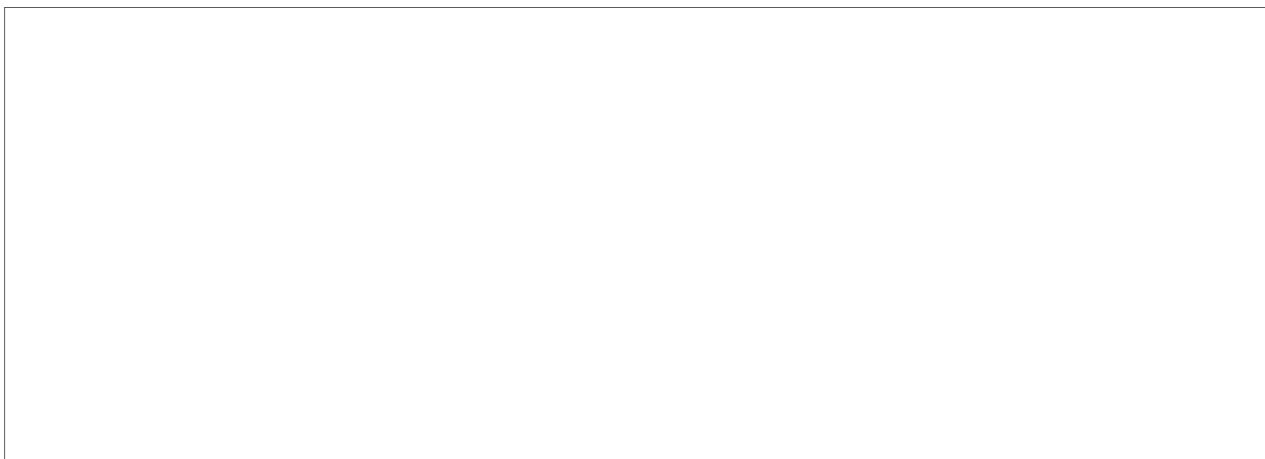
5 messages

**Peter Chadlington**

11 March 2011 16:52

To: jeremy

Jeremy - Here is a private email from David Puttnam which I said I would forward to you. Have a look. At some stage I think it would be a good idea for you both to discuss this as he returns to uk on Monday and may start some media interviews. Peter



**2 attachments**

**JHLetterFinal.doc**  
45K

**ATT444448.txt**  
1K

**Peter Chadlington**

11 March 2011 17:41

To: jerem

Here you are  
[Quoted text hidden]

**2 attachments**

**JHLetterFinal.doc**  
45K

**ATT444448.txt**  
1K

**Jeremy Hunt**

11 March 2011 18:15

To: Peter Chadlington

He writes thoughtfully and intelligently and I will offer to see him as soon as he is back  
J.

On 11 Mar 2011, at 17:41, "Peter Chadlington"

[Quoted text hidden]  
> <JHLetterFinal.doc>  
>  
>  
>  
> Sent from my iPad

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**Jeremy Hunt** [redacted]

11 March 2011 18:17

To: [redacted]  
Cc: Adam SMITH [redacted]

please arrange mtg. with Lord P asap and ask John Z for brief on points he raises  
Thx  
J.

Begin forwarded message:

**From:** "Peter Chadlington" [redacted]  
**Date:** 11 March 2011 17:41:29 GMT  
**To:** <jeremy [redacted]>  
**Subject:** FW: JHLetterFinal

[Quoted text hidden]

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 **JHLetterFinal.doc**  
45K

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**Peter Chadlington** [redacted]

11 March 2011 20:48

To: jeremy [redacted]

Great.

[Quoted text hidden]

SS. E. 07

11 March 2011

Rt Hon Jeremy Hunt MP  
Secretary of State for Culture, Media and Sport  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Dear Jeremy,

As you possibly know, I've devoted the past thirty years of my life to the issues of media plurality and preserving the widest consumer choice in the provision of both information and entertainment. I believe it is the responsibility of public policy to ensure the independence and diversity of opinion that have been a unique hallmark of our national culture – a quality much envied in other parts of the world.

I've also attempted to be strictly non-partisan in my commitment to these issues.

At different times this has led to battles with most of the relevant unions and trade bodies, all of the broadcasters, and even my own Party!

In every case, what I was opposing was the concentration of power - be it from the market or elsewhere. The impact of new communication technologies has, if anything, made this more rather than less challenging.

My passion was always based on a conviction that 'information' and its related industries are unlike any other, in that they have an enormous influence on the broadest range of opinions and behaviour - in fact on the very health of society.

In principle, I welcome much of what you've been able to achieve in respect to the future of Sky News case. However, experience suggests that, when dealing with News Corporation and its Chairman, the devil lies very much in the detail.

But before going into any of that detail I feel I should set out a few overriding concerns.

The first is that the level of unregulated market and financial power that will accrue to News Corporation as a result of this transaction is such as to ensure the eventual emasculation of 'free to air' public service broadcasting' as we have known it.

Moreover, recent experience adds another serious concern, that the BBC, along with Channel Four will, in a relatively short time, become publicly funded Research and Development operations for subscription services. This has already happened to PBS in the United States and is worth a much longer discussion than is possible in this note.

I fear that in hindsight these developments will be seen to have dated from, and been accelerated by the completion of the News Corporation takeover.

I find it hard to imagine that this is your intention, and if I learned one thing from my thirteen years in Government it's that a great deal of political capital can be spent clearing up the unintended consequences of what might, at the time, have appeared to have been an expedient decision.

My second overriding concern is that the clearance the News Corporation bid received from the European Commission was based, at least in part, on the astonishing notion that since there had been no direct experience of the market-distorting effects of 'bundling' it was impossible to find against it. It is equally true to say that there was no direct experience of the dangers of 'credit default swaps', but that didn't prevent them from bringing the world as close as its ever been to financial meltdown!

I would argue that competition law, in a fast moving sector like the media, must be able to take account of, and make judgements based on 'highly probable' as well as 'actual' market dominance.

Turning to the specifics of the case you are currently considering.

It appears to me that the proposed 'undertakings in lieu' (UILs) do not take into account the following issues:

1. They only attempt to address the impact of the proposed transaction with regard to news. In doing so they fail to consider the longer-term effect on plurality across the media as a whole.
2. They fail to consider the ability of News Corporation and Sky to bring together their advertising sales houses and, by bundling advertising packages from television and newspapers together, undercut their competitors, leading to a significant distortion and subsequent weakening of competition in the advertising market.

3. The UILs fail to address the unfettered ability of News Corporation to use its newspapers, and its online products such as 'The Daily', to cross-promote Sky's content and services - including its broadband services. This was something that I consistently warned against during the passage of the last Communications Bill.
4. They fail to address the longer term impact on British audiences of the greatly enhanced market power that News Corporation will have (not least because of its access to BSkyB's cash-flows) when acquiring contractual rights to individual talent, as well as to television programming such as sports, films and other high cost material such as drama. Over time this will unquestionably diminish the ability of other broadcasters to compete for these rights, thus depriving non-Sky subscribers of access to much of this programming. You only have to imagine the 'Premier League effect' translated into other genres to understand where this could lead us.
5. The UILs fail to address the potential for the 'bundling' of services, such as newspapers, Sky, broadband packages and online products in a way that effectively represents a form of predatory pricing, which is detrimental to competitors, and therefore ultimately to choice for consumers.
6. Moreover, with specific regard to news, the proposed UILs do not:
  - Specify the process by which the independent Chair and Directors of Sky News will be appointed
  - Specify the manner in which the Chair and Directors would be able to remedy any editorial or commercial interference in Sky News by News Corp.
  - Set out any mechanism by which members of the Murdoch family, or interests affiliated with them, could be prevented from acquiring or influencing any of the 60.9% shares of Sky News not owned by News Corp.
  - Define the meaning of the "material breach" which would allow News Corp. to terminate the carriage agreement for Sky News.

Separately, in its letter to you of March 1, 2011, Ofcom suggests that "the Government should consider undertaking a wider review of the statutory framework to ensure sufficient plurality in the public interest in the longer term".



It goes further; stating that “the current system is deficient in failing to provide for intervention to be considered where plurality concerns arise in the absence of a corporate transaction involving media enterprises.”

I urge you to implement such a review as soon as possible, and certainly well ahead of the forthcoming Communications Bill.

In the House of Lords and elsewhere I have repeatedly called for a comprehensive 'cross-media impact study' - but so far to no avail. I would also strongly urge that you instruct Ofcom to commission such a study as an evidence-based prelude to a review of the statutory framework governing the whole area of (new and old) media plurality.

Taken together, I believe that the case for a wholesale review of the policy framework within which we are all attempting to navigate our way forward is not only justified but probably way overdue.

It might interest you to know that the terms of reference of the Joint Scrutiny Committee, on what became the 2003 Communications Act, did not permit us to make any policy recommendations in respect of the Internet.

If it seemed a pretty daft decision then, in hindsight it was patently absurd!

There is one further issue which I think needs to be urgently addressed. Internationally, regulatory frameworks have been established to promote 'reasonable' platform access fees (both the size and direction of payments) for public service channels. These interventions are made in recognition of the fact that normal commercial negotiations are unlikely to deliver an optimal market outcome.

In all developed markets, apart from the UK, platform operators make some contribution to broadcasters and/or content providers in return for the right to distribute public service channels; in the form of copyright fees, privileged access and/or payment of incremental distribution fees.

The situation in the UK is an increasingly indefensible historical anomaly, and one which needs to be addressed as soon as possible.

Specifically, whilst all UK public service channels have 'must offer' obligations to any platform with a "significant number of end users"<sup>1</sup>, there are no active 'must carry' obligations on the part of platform operators. This situation enables platform operators to charge the PSBs significant platform access fees. For example, the public service channels (all the BBC licence funded channels,

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<sup>1</sup> S272 and S273 of the Communications Act

ITV1, Channel 4 and Channel 5) are estimated to have incurred c.£18m in platform access fees payable to Sky in 2009 alone!

There needs to be a specific focus on the introduction of 'must carry' obligations, along with a fully transparent refinement to Sky's current charging methodology. Contrast the situation in the US where only this week, Chase Carey, COO and Deputy Chair of News Corporation, said that Fox News would be looking for a "significant increase" in carriage fees from cable systems in the current round of negotiations!

I believe this is a pivotal moment for the communications sector. I find myself writing to you from the United States which, experience suggests, is not a marketplace for ideas and cultural excellence that we should necessarily be seeking to emulate - we in Britain happen to have found, or at least stumbled upon a public/private mix that works.

I urge you to use all the powers available to you to thoughtfully protect and build on it.

Kindest regards