

Trinity Mirror plc

29 March 2011

Rt Hon Jeremy Hunt MP
Department of Culture Media & Sport
2-4 Cockspur Street
London
SW1Y 5DH

Dear Mr Hunt

News Corporation/BSkyB

Thank you for meeting us on Thursday.

We are however no closer to seeing how you could sensibly claim that that Sky News would have "more independence from News Corporation than it currently has".

Our earlier submission to you sets out our thoughts in greater detail, but we did want to have one last go at highlighting the key flaws in the remedy you envisage.

The proposed merger would have profound implications for our businesses but also for plurality (which is what we are concerned with here). This is about the UK media landscape over the long term. You will understand therefore our need to make sure we leave no stone unturned in seeking to preserve the current position.

Remedy makes Sky News more dependent on News Corporation

Currently, Sky News is part of BSkyB and as such part of a large and hugely successful business which enjoys income from a wide range of third party customers. While News Corporation is a major shareholder in BSkyB, BSkyB is not dependent upon it for its revenues.¹

In contrast, under the remedy you are proposing, Sky News would be a separate entity reliant on a subsidy from News Corporation (now 100% owner of BSkyB) for its survival. Moreover, News Corporation would be given the ability to decide whether or not to continue the subsidy after 10 years (through the carriage agreement renewal decision).

Such an arrangement must by its very nature undermine the ability of Sky News to make a contribution to media plurality independent of its new paymaster News Corporation.

Furthermore, we are concerned that no proper thought seems to have been given to the commercial realities that will face the "stand-alone" Sky News. We suspect that this is a direct

¹ You should also be aware that the CC has found (in the context of *BSkyB/ITV*) that News Corporation currently has no ability to influence the news agenda of Sky News.

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result of your refusal to allow any input into the shaping of the UIL from third party commercial practitioners.

For instance, it is quite clear that much of the Sky News audience is as a direct result of the very heavy promotion of its programming on other BSkyB channels. Clearly those channels would not use up so much promotional time unless BSkyB's current managers believed it was needed by Sky News. What will happen under the new arrangement? Will Sky News be charged "rate card" for the time as paid for advertising? If so, will it be able to afford the bill? If the time is to be given free or at a discount, Sky News becomes further beholden to BSkyB and therefore News Corporation. And, if Sky News doesn't get the promotion it won't get the viewers and will become even less viable.

Sky News will also be dependent on News Corporation to sell its advertising airtime. Moreover, its ratings are too few for its airtime to be sold on a stand-alone basis. It will only attract advertising as part of a "package sale" – presumably with other BSkyB channels.

Yet again, Sky News will be further intertwined with News Corporation.

Not a viable company

You have made much play in your public statements about the fact that the Newco will have freely and publicly tradable shares. We doubt that this will prove to be the reality.

Apart from the lingering doubt as to whether the Newco would even be capable of being listed, we question which serious investor would wish to hold the shares. Newco would have a life which could be extinguished after 10 years by News Corporation and during that period its health and well being would be wholly dependent on News Corporation. It would have no real prospect of raising capital or of investing in its future. We have to ask – what is the investment case?

Governance provisions are insufficient

We cannot see how you can sensibly come to the view that the governance provisions in the remedy proposal can safeguard Sky News' editorial independence in circumstances where it is financially and commercially dependent on News Corporation.

Previous experience shows that obligations of this type have not prevented News Corporation from influencing editorial policy. For example, our earlier submissions outline the widespread evidence (endorsed by the House of Lords Communications Committee) that the Independent National Directors system governing the Times newspapers failed to prevent News Corporation from influencing the editorial policy of those titles.

Nor do we think you can rely (as you seek to) on the independent directors to act as the guardians of editorial independence. The independent directors will have a legal obligation (and financial incentive) to promote the best commercial interests of Sky News which, as above will in effect equate to maintaining the financial support of News Corporation on which Sky News will be dependent.

In our meeting you referred to the inclusion of editorial independence principles in Sky News' articles of association as providing an additional safeguard. This fails to address the reality that there will be no independent external oversight of Sky News' editorial policy. The articles of associations are a matter for Sky News, its directors and shareholders (all of whom will have a commercial incentive not to act contrary to the wishes of News Corporation).

Therefore, we remain of the view that you cannot reasonably conclude that the governance provisions are sufficient to counter-act Sky News' structural dependence on News Corporation.

No lasting solution

The finite duration of the carriage agreement means it is entirely in News Corporation's gift to decide whether Sky News continues to exist after 10 years. We share the OFT's view that this is an "essential structural limitation" of the remedy.

We cannot see any valid reason not to require a lasting solution. You accept that the merger gives rise to plurality concerns (and are therefore requiring a remedy) but you have not explained how or why these concerns would disappear over the next few years. You are only able to refer to Ofcom's view that "the situation with regard to plurality may [but may not] be significantly different in 10 years time".

We believe that media plurality is far too important to be treated in this manner. It is not sufficient to tackle the problem for a few years and hope that it disappears. The merger should not be cleared unless News Corporation can provide a remedy that safeguards plurality on a lasting basis.

Conclusion

You expressed the view in your announcement that "nothing was more precious to [you] than the free and independent press for which this country is famous" and reiterated this in our meeting.

We urge you to act in a manner consistent with that worthy sentiment by referring the merger to the Competition Commission for a thorough review.

Yours sincerely



Sly Bailey

For and on behalf of:
Associated Newspapers
Guardian Media Group
Northcliffe Media
Telegraph Media Group
Trinity Mirror