

Press release: Statement from the Culture Secretary on the proposed Sky plc / 21st Century Fox Inc. merger

Mr Speaker, I am here to give an update on the proposed merger between 21st Century Fox and Sky Plc, and my decision whether or not to refer the transaction for a full 6 month investigation by the Competition and Markets Authority (CMA).

I should first remind the House that in my quasi-judicial role I must:

1. Come to a decision on the basis of relevant evidence;
2. Act independently in a process that is fair and impartial; and
3. Take my decision as promptly as is reasonably practicable.

I am committed to transparency and openness in this process and have been clear my decisions can only be influenced by facts, not opinions – and by the evidence, not who shouts the loudest.

Media Plurality

Turning first to the question of media plurality, I can confirm that none of the representations received have persuaded me to change my position. Accordingly, I can confirm my intention to make a referral on the media plurality ground to the CMA.

Representations

Turning now to commitment to broadcasting standards, over the summer my officials reviewed the almost 43 thousand representations received. A significant majority were campaign-inspired, arguing against the merger going ahead, but generally without providing new or further evidence or commenting on Ofcom's approach.

Overall, around 30 of the 43 thousand representations were substantive, raising potentially new evidence or commenting on Ofcom's approach. Almost all were related to the question of commitment to broadcasting standards.

In light of these representations I asked Ofcom to provide further advice and can I put on record my gratitude for Ofcom's efforts in responding to the questions raised.

I am, today, publishing the exchanges between my Department and Ofcom.

In these I sought clarification on:

1. The threshold Ofcom applied to its consideration of the commitment to broadcasting standards ground
2. The consideration made of broadcasting compliance, and

3. The consideration made of corporate governance issues

I also asked Ofcom to consider whether any of the new, substantive representations I received affected its assessment.

Broadcasting standards

I have taken careful account of all relevant representations and Ofcom's advice and have, today – as required by the legislation – written to the parties to inform them I am now minded-to-refer the merger to the CMA on the grounds of genuine commitment to broadcasting standards.

Threshold for referral

I will now set out the technical reasons for this decision.

Questions were raised about the threshold for referral. The legal threshold for a reference to the CMA is low. I have the power to make a reference if I believe there is a risk – which is not purely fanciful – that the merger might operate against the specified public interests.

In its original report, Ofcom stated that “...we consider that there are no broadcasting standards concerns that may justify a reference”. At the time Ofcom appeared to be unequivocal. Following the additional representations, Ofcom has further clarified that “...while we consider there are non-fanciful concerns, we do not consider that these are such as may justify a reference in relation to the broadcast standards public interest consideration.”

The existence of non-fanciful concerns means that – as a matter of law – the threshold for a reference on the broadcasting standards ground is met.

In light of all representations and Ofcom's additional advice, I believe these are sufficient to warrant the exercise of my discretion to refer.

Lack of procedures for broadcast compliance in the UK for Fox News

The first concern was raised in Ofcom's public interest report: that Fox did not have adequate compliance procedures in place for the broadcast of Fox News in the UK and only took action to improve its approach to compliance after Ofcom expressed concerns.

Ofcom has now confirmed it considers this to raise non-fanciful concerns but which are not sufficiently serious to warrant referral. I consider that these non-fanciful concerns do warrant further consideration.

The fact that Fox belatedly established such procedures does not ease my concerns, nor does Fox's compliance history.

Ofcom was reassured by the existence of the compliance regime which provides licensees with an incentive to comply. However, it is clear to me that Parliament intended the scrutiny of whether an acquiring party has a “genuine

commitment" to attaining broadcasting standards objectives to happen before a merger takes place.

Third parties also raised concerns about what they termed the 'Foxification' of Fox-owned news outlets internationally. On the evidence before me I am not able to conclude that this raises non-fanciful concerns. However, I consider it important that entities which adopt controversial or partisan approaches to news and current affairs in other jurisdictions should, at the same time, have a genuine commitment to broadcasting standards here. These are matters the CMA may wish to consider in the event of a referral.

Corporate governance failures

Turning to the question of corporate governance failures, Ofcom states in its latest correspondence that these raise non-fanciful concerns in respect of the broadcasting standards ground. However, it again concludes that these concerns do not warrant a reference.

I agree that corporate governance issues at Fox raise non-fanciful concerns, but in my view it would be appropriate for these concerns to be considered further by the CMA.

I agree with the view that, in this context, my proper concern is whether Fox will have a genuine commitment to attaining broadcasting standards objectives. However, I am not confident that weaknesses in Fox's corporate governance arrangements are incapable of affecting compliance in the broadcasting standards context.

I have outstanding non-fanciful concerns about these matters and I am of the view that they should be further considered by the CMA.

Representations from parties

Before I come to a final decision, I am required – under the Enterprise Act 2002 – to allow the parties to make representations on my proposed decision, and this is the reason my decision at this stage remains a minded-to one. I have given the parties 10 working days to respond.

Following receipt of any representations from the parties I will aim to come to my final decision in relation to both grounds as promptly as I can.

Close

I would remind the House that should I decide to refer, on one or both grounds, the merger will be subject to a full and detailed investigation by the CMA over a six month period. Such a referral does not signal the outcome of that investigation.

Given the quasi-judicial nature of this matter, my decision cannot be guided by the Parliamentary timetable. If I come to my decision during recess I will write, as I have previously, and return to this House at the earliest possible opportunity to provide an update.

I commend this statement to the House.