

Statement to Parliament: Sky/Fox Merger

CHECK AGAINST DELIVERY

I came to this House, on 16 March, to confirm that I had issued a European Intervention Notice (EIN) in relation to the proposed merger between 21st Century Fox and Sky Plc on the grounds of media plurality and commitment to broadcasting standards.

The EIN triggered a requirement for Ofcom to report – initially by 16 May but extended to 20 June – on the media public interest considerations and the Competition and Markets Authority (CMA) on jurisdiction. I issued a statement last week to confirm that I had received those reports and undertook to both publish them, today, and to come to the House to set out my minded-to decision on the next step in this process: whether or not to refer the merger to a fuller Phase 2 investigation.

In line with my commitments, I am today publishing both documents, copies of which will also be deposited in the libraries of both Houses. I will also be publishing later today the letter to both parties with my decision, which I sent them this morning.

Separately, Ofcom is today publishing its fit and proper assessment of the merged company. This reflects its ongoing responsibility as the independent regulator under the Broadcasting Acts to monitor who is fit and proper to hold a broadcast licence.

Quasi-judicial process

Decisions made by the Secretary of State on media mergers under the Enterprise Act 2002 are made on a quasi-judicial basis. I want to be very clear about what that means. When taking a quasi-judicial decision I am tightly bound. I must take my decision only on the basis of the evidence that is relevant to the specified public interests. My decision cannot be based on opinion, speculation or conjecture. Any decision I take must be objectively justified by the facts before me. I must set aside wider political considerations going beyond the scope of the legislation. I must act independently and follow a process that is scrupulously fair and impartial. This is what I am doing.

Media plurality

On the question of whether the merger gives rise to public interest concerns in relation to media plurality, Ofcom's report is unambiguous.

It concludes, "The transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, television, in print and online. We consider that the plurality

concerns may justify the Secretary of State making a reference to the Competition and Markets Authority”.

On the basis of Ofcom’s assessment, I confirm that I am minded-to refer to a Phase 2 investigation on the grounds of media plurality.

The reasoning and evidence on which Ofcom’s recommendation is based are persuasive. The proposed entity would have the third largest total reach of any news provider – lower only than the BBC and ITN – and would, uniquely, span news coverage on television, radio, in newspapers and online.

Ofcom’s report states that the proposed transaction would give the Murdoch Family Trust material influence over news providers with a significant presence across all key platforms.

This potentially raises public interest concerns because, in Ofcom’s view, the transaction may increase members of the Murdoch Family Trust’s ability to influence the overall news agenda and their ability to influence the political process and it may also result in the perception of increased influence.

These are clear grounds whereby a referral to a Phase 2 investigation is warranted – so that is what I am minded-to do.

There, is, however, a statutory process that I must follow. I am required by legislation to allow the parties the opportunity to make representations to me on this position before I reach a final decision. I will now do that and have given them until Friday 14 July to respond.

Commitment to broadcasting standards

The second question concerns whether after the merger the relevant media enterprises would have a genuine commitment to broadcasting standards. Ofcom is unequivocal.

It concludes, “In light of Fox’s and Sky’s broadcast compliance records and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. Therefore, we consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority”.

Ofcom’s approach sought to measure commitment to broadcasting standards by reference to breaches of regulatory codes. It found that Fox’s compliance with the UK’s Broadcasting Code is in line with comparable broadcasters. Nor did Fox’s compliance record in relation to overseas broadcast jurisdictions (where Ofcom’s analysis focused largely on the EU) give cause for concern.

I also asked Ofcom to consider the effect of any failure of corporate governance on this public interest consideration. Ofcom did this in the context of its separate assessment of whether Fox and Sky would remain fit and proper to hold broadcast licenses following the transaction. It concluded

that behaviours alleged at Fox News in the US amount to 'significant corporate failures'. However, these did not in its view demonstrate that the merged company would lack a genuine commitment to broadcasting standards.

In reaching a view I have to be guided only by the evidence before me. As such – based on the Ofcom report – I am currently minded-not-to refer to a Phase 2 investigation in relation to a genuine commitment to broadcasting standards.

Representations

As required by legislation, I am giving the parties an opportunity to make representations in relation to media plurality grounds – where I am minded to refer for a phase two investigation by the CMA. In the interests of transparency and ensuring all the evidence has been considered, I will also invite wider representations on the question of commitment to broadcasting standards – where I am currently minded-not to refer for a phase two investigation.

Parties responding to the consultation should not simply duplicate any representations previously made to Ofcom. Instead, responses should be limited to setting out any new and substantial evidence and any comment on Ofcom's assessment.

While there are strong feelings among both supporters and opponents of this merger, in this quasi judicial process, my decisions can only be influenced by facts, not opinions – and by the quality of evidence, not who shouts the loudest.

The invitation to make representations will open today and close on Friday 14 July and can be found on the DCMS website.

Ofcom's recommendation on UILs and UIL process

Under the process set out in the Enterprise Act, it is open to the parties to propose undertakings in lieu of a reference to the CMA for a more detailed investigation. In other words, the parties may seek to avoid a Phase 2 reference by proposing remedies to address the public interest concerns that have provisionally been identified.

The decision as to whether or not to accept undertakings in lieu is for the Secretary of State alone. However – and somewhat unusually – the parties proposed a set of undertakings to Ofcom and Ofcom commented on them in its report. The proposed undertakings centred around Fox maintaining the editorial independence of Sky News by establishing a separate Editorial Board – with a majority of independent members – to oversee the appointment of the Head of Sky News and any changes to Sky News Editorial Guidelines. They also include a commitment to maintain Sky branded news for five years with spending at least at similar levels to now.

Ofcom's view was that these remedies would mitigate the – serious – media plurality public interest concerns. They also suggested that the remedies could be further strengthened.

The parties last week – without prejudice to my decision today, of which they only learned this morning – formally submitted undertakings in largely the same terms to me. In accordance with the legislation, if I still intend to refer the merger after having considered representations from the parties, I am required to consider whether or not these remedies are appropriate.

Given the parties have offered these undertakings, and Ofcom have commented on them, I have taken an initial view. I can confirm that I have, today, written to the parties indicating that I am minded-not-to accept the undertakings that have been offered.

While Ofcom suggests that they mitigate its concerns, it is for the Secretary of State to decide whether they sufficiently mitigate – or ideally fully remedy – what are serious public interest considerations.

I note that Ofcom's report says 'we recognise that behavioural undertakings can be difficult to monitor and enforced and that there are areas in which the proposed undertakings could be strengthened.' It cites questions regarding 'the ongoing arrangements for the appointment of the independent members of the Sky News Editorial Board and the period of Fox's commitment to maintaining its investment in Sky News'.

I also note the guidance of the Competition and Markets Authority which – in the context of competition cases, says that UIIs are appropriate where the remedies are 'clear cut... effective and capable of ready implementation' and that, in ordinary cases, it is 'highly unlikely to accept behavioural remedies at phase 1'

I have given the parties 10 working days – until Friday 14 July – to make representations on the minded-to decisions I have reached. If I receive further offers of undertakings as part of those representations, I will keep the House informed on how I intend to structure the statutory process I must follow when considering them.

Next stage of the process

As I have set out – I will now be taking representations on my minded to positions. The call will remain open for ten working days and I will then consider the evidence received before coming to a final decision on both grounds. To be clear, the minded-to decisions I have outlined today are not my final decisions.

A word before I close on Ofcom's fit and proper assessment. As the independent regulator, this is a matter for Ofcom, and my understanding is they will publish their report today. I have seen the report and know many members in this house will want to comment on it. Given my current quasi-judicial role in the merger I will not be commenting on the findings.

It is rightly not for Government to determine who should, and should not, hold TV broadcasting licences. Ofcom has an on-going duty to ensure all UK broadcasters are fit and proper to hold TV broadcasting licences. I am clear that if any evidence comes to light then it is for Ofcom to take account of

that evidence.

I trust – as before – that this update is helpful to Honourable and Right Honourable Members and that this statement gives an opportunity to debate this important issue, while at the same time, respecting the limits of what I can say given my ongoing quasi-judicial role in relation to this merger.

I commend this statement to the House.