

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.

[News story: Plans published to make it easier to shop around for legal services](#)

Legal services regulators have today published their plans to help people shop around more effectively, in response to the CMA's market study.

The Competition and Markets Authority (CMA) spent a year conducting a [thorough review](#), known as a market study, of the industry and found that there was not enough information available on price, quality and service to help those in need of legal support choose the best option.

The CMA has since been working with the Legal Services Board and 8 frontline regulators in England and Wales to drive the implementation of changes recommended by the study. Today they published their action plans for implementing our recommendations.

Each regulator represents a different profession or area of the market (for example, solicitors, accountants, licensed conveyancers) and these regulators, the CMA and the Legal Services Board have been coordinating their plans for implementing the [CMA's recommendations](#).

The CMA's recommendations were designed specifically to improve transparency from legal firms on price, quality and service and enable customers to navigate the market more easily and get value for money.

The CMA recommended that the regulators:

- revise their regulatory requirements to ensure that companies offering legal services display information on price, service and conditions of redress openly on their websites and in their publicity material
- improve and promote the existing Legal Choices website so that it becomes a starting point for customers needing help to navigate the

market and purchase services

- make more regulatory data available to facilitate the development of reliable comparison sites
- encourage legal services providers to engage with feedback and review platforms to ensure that customers can benefit from the experience of previous consumers before making their choice

Note

1. The 8 frontline legal services regulators in England and Wales are:
 - a. Bar Standards Board (BSB) – Barristers
 - b. CILEx Regulation (Chartered Legal Executives and Legal Executives)
 - c. Council for Licensed Conveyancers (CLC) – Licensed Conveyancers
 - d. Costs Lawyers Standards Board (CLSB) – Costs Lawyers
 - e. Intellectual Property Regulation Board (IPReg) – Trademark and Patent Attorneys
 - f. Institute of Chartered Accountants in England and Wales (ICAEW) – Chartered Accountants conducting probate
 - g. Master of the Faculties (Notaries)
 - h. Solicitors Regulation Authority (SRA) (Solicitors)

[News story: £15 million boost for 50 cutting-edge projects](#)

Funding will support UK businesses to take forward cutting-edge and game-changing projects leading to new products, processes or services.

Innovative businesses across the UK will receive up to £15 million through Innovate UK's latest open funding competition. It comes through round 2 of our regular series of open competitions, which support good ideas with market potential.

A total of 50 projects involving around 75 partners were successful with applications. They will receive funding ranging from £25,000 to £1 million for projects lasting up to 36 months.

Examples include:

- Biodice – a joint project between [JWA Racing](#) and the [University of Birmingham](#) – will support more sustainable transport by pioneering a scalable internal combustion engine that will lower fuel consumption, emission and costs
- [Petalite](#) is developing a technology platform to speed up and improve electric vehicle battery charging
- [OMass Technologies'](#) solution will more effectively assess and interface with membrane proteins. These are notoriously difficult to study, yet are important targets for drug discovery

Fionnuala Costello, Head of Open Programmes at Innovate UK, said:

I am very pleased that we have been able to fund such a wide range of innovative projects with great potential for return on investment for companies, both across the UK and across our major sectors.

Our next £15 million funding competition is now open for applications. These should have a similar potential to generate commercial impact and economic growth.

[Press release: Ineos is granted environmental permit for exploratory borehole in Derbyshire](#)

The Environment Agency has granted an environmental permit to allow Ineos Upstream Ltd to drill an exploratory borehole at a site in Derbyshire.

The 'Standard Rules' permit allows the company to carry out drilling, waste management, and low-risk testing at its Bramley Moor Lane drilling site, near the village of Marsh Lane. It does not allow fracking.

Standard Rules permits include fixed rules and conditions that cover common, low-risk industrial activities. They are issued to companies only after they demonstrate that they understand and can manage the risks to people and the environment.

If the firm wishes to carry out additional activities on the site in the

future, it must submit a bespoke permit application that is tailored to those activities.

A spokesperson for the Environment Agency said:

Our regulatory controls for onshore oil and gas are in place to protect people and the environment. Standard Rules permits are common across industry and maintain high levels of environmental protection. They do not allow companies to carry out fracking – this activity requires a bespoke permit application which would be subject to a site-specific environmental risk assessment and extensive public consultation.

As with all decisions on whether to issue environmental permits, we will assess a company's proposals to ensure they meet strict requirements. If an activity poses an unacceptable risk to the environment, the activity will not be permitted.

[Press release: CMA accepts commitments offered to address online auction concerns](#)

The Competition and Markets Authority (CMA) has today [accepted final commitments](#) offered by the company, which it believes will enable more competition between online auction platforms. It consulted on ATG Media's proposed commitments [last month](#).

ATG Media is the largest provider of live online bidding platforms in the UK, including 'The Saleroom' – an arts and antiques platform. These platforms are used by auction houses to facilitate online live bidding without bidders having to attend in person.

Last November the CMA launched a Competition Act investigation into 3 practices used by ATG Media which it considered may breach competition laws by preventing or discouraging its customers from using rival platforms.

The 3 practices under investigation were:

- obtaining exclusive deals with auction houses, so that they do not use other providers;

- preventing auction houses getting a cheaper online bidding rate with other platforms for their bidders – through contract clauses known as most favoured nation (MFN) or price parity clauses; and
- preventing auction houses promoting or advertising rival live online bidding platforms in competition with ATG Media.

The CMA considers that these practices may have prevented ATG Media's rivals from being able to compete effectively in the market and prevented consumers from getting a better deal for online bidding.

ATG Media has today given legally binding promises to the CMA (known as commitments) to stop carrying out any of these practices for a period of 5 years.

Following acceptance of these commitments, the CMA has closed its investigation into whether ATG Media has abused a dominant position or entered into anti-competitive agreements.

The CMA no longer needs to take a decision on an application from a third party for 'interim measures' directions, to halt the practices pending the outcome of a full investigation, as the commitments fully address all its competition concerns and bring a halt to those practices. The CMA had given serious consideration to the application for interim measures but shortly before it was to make a final decision on this, ATG Media made its commitments offer.

Michael Grenfell, Executive Director of Enforcement at the CMA, said:

We are pleased that ATG Media has given commitments which address all our concerns. Now these previous restrictions have been removed, we believe alternative platforms or new entrants will be able to compete more easily and offer cheaper commission rates to bidders.

Online and digital markets represent a large and growing part of the economy and we must ensure that these often fast-moving markets do not evolve in ways which may harm consumers.

Reaching a swift outcome in this case demonstrates our ability to ensure that potentially anti-competitive practices are ended quickly.

Further details about the CMA's investigation can be found on the [case page](#).

Note for editors

1. The CMA is the UK's primary competition and consumer authority. It is an independent non-ministerial government department with responsibility

for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law. For CMA updates, follow us on Twitter [@CMAgovuk](#), [Flickr](#), [LinkedIn](#) and [Facebook](#). Sign up to our [email alerts](#) to receive updates on Competition Act 1998 cases.

2. The Chapter I prohibition in the Competition Act 1998 (the Act) prohibits anti-competitive agreements and concerted practices between businesses which have as their object or effect the appreciable prevention, restriction or distortion of competition within the UK. The Chapter II prohibition in the Act prohibits the abuse of a dominant position by one or more companies which may affect trade within the UK or a part of it. Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) contain equivalent provisions applicable where there may be an appreciable effect on trade between EU Member States.
3. On 22 November 2016, the CMA launched an investigation into suspected breaches of competition law in respect of the supply of auction services in the UK. The investigation is under Chapters I and II of the Act, and Articles 101 and 102 TFEU. The investigation relates to suspected anti-competitive agreement(s) or concerted practice(s) and suspected abuse of dominance in the supply of live online bidding auction platform services in the UK, in particular, suspected exclusionary and restrictive pricing practices, including most favoured nation provisions in respect of online sales.
4. Where the CMA has begun an investigation under section 25 of the Act, it may accept commitments to take such action as it considers appropriate for the purposes of addressing the competition concerns it has identified. When the CMA has formally accepted commitments, it must close its investigation into the conduct that was the subject of the investigation.
5. The decision by the CMA to accept commitments does not amount to or imply any finding as to the legality or otherwise of the conduct by the parties under investigation either prior to acceptance of the commitments or once the commitments are in place.
6. The CMA may reopen its investigation and take other action in certain limited circumstances (for example, where it has reasonable grounds for suspecting non-compliance with the commitments or believing that there has been a material change of circumstances since the commitments were accepted).
7. Any businesses or individuals that have concerns about compliance with the commitments can contact the CMA by email (general.enquiries@cma.gsi.gov.uk) or by phone (020 3738 6000).

8. The CMA also received an application under section 35 of the Act for interim measures in connection with this case. As a result of acceptance of commitments and closure of the investigation, the CMA will not reach a decision on whether or not to issue interim measures directions.
9. Media enquiries to the CMA should be directed to press@cma.gsi.gov.uk or 020 3738 6798.