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Sky Fox Merger - Proposed Undertakings - by 21st Century Fox, Inc and the Walt Disney Company

Submission by Prospect to the Department for Digital, Culture, Media, and Sport

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Introduction

1. Prospect is a trade union representing over 140,000 skilled and professional workers across the UK economy, covering both the public and private sectors. Our BECTU Sector has a strong presence in the broadcasting industry, with over 8,000 members working for the main public broadcasters, either directly or as employees of their service contract providers, and a further 14,000 who generate content for film and TV in the production industry.

Protecting broadcasting standards

2. Fox TV, owned by 21st Century Fox, has been the subject of numerous complaints about broadcasting standards, determined by regulators in the USA, and, while the Fox news channel was available here, in the UK as well. These have ranged from lack of due impartiality, through on-air promotion of products for sale dressed up as editorial content, to biased coverage of both the most recent US Presidential election, and the UK's referendum on EU membership.

3. Coupled with the phone-hacking scandal in the UK, we believe this constitutes evidence that compliance standards at businesses with a Murdoch family stake are not what they should be. On phone-hacking, the Parliamentary Committee on Culture, Media, and Sport noted in a report: "Corporately, the News of the World and News International misled the Committee about the true nature and extent of the internal investigations they professed to have carried out in relation to phone hacking; by making statements they would have known were not fully truthful; and by failing to disclose documents which would have helped expose the truth."

4. Prospect supports the principle that Sky News, rather than transferring into ownership of a Murdoch family asset, should be divested to a third party with suitable compliance and governance arrangements, as laid out in the various undertakings given by parties concerned, and the Articles of Association for NewCo, the proposed divestiture vehicle. However, this, firstly, leaves the bulk of Sky PLC in the ownership of 21st Century Fox, dominated by the Murdoch Family Trust, and secondly presents several challenging problems to do with the separation of a currently integrated news operation within Sky into a new corporate entity.

5. On the first point, while it appears that there will be robust compliance and editorial independence for Sky News, both as a subsidiary of Sky PLC, and subsequently a trade acquisition of Walt Disney Company, the editorial policies and obligations under Ofcom service licences for the large remainder of Sky PLC will rest with 21st Century Fox. As noted above, this company, via Fox TV, has had a difficult relationship with regulators in a number of territories, and, while the establishment of suitable governance and compliance arrangements for Sky News is welcome, it begs the question of how well the much-larger Sky PLC broadcaster will fare under new ownership.

6. Sky broadcasts a broad range of genres, all under Ofcom licences, but within a looser regulatory framework than the UK's Public Service Broadcasters. The undertakings from 21st Century Fox are restricted to Sky News, but in our view, it would be prudent also to seek undertakings about the standard and mix of the broad swathe of future programming, if the Fox bid for Sky succeeds. Fox TV in the US, with the exception of sport, predominantly acquires, rather than produces, its programming; it does not offer children's content tailored to the needs of its young audience; and currently carries no news or orthodox current affairs on its branded channels, other than Fox News. Instead, the network is known best for introducing the TV "shock-jock" to the USA, and it is fair to ask if 21st Century Fox, given this experience, will maintain the broadcasting standards expected of a UK-licence holder, without rigorous supervision.

Corporate separation: complex risks of separating Sky News from Sky PLC

7. The complexity of divesting Sky News via a new incorporated entity would be a difficult and disruptive process involving separation out of the assets, staff, licences, EPG access, transmission platform, and numerous resources and facilities that are currently shared across Sky PLC.

8. Prospect's BECTU sector has long experience of this kind of divestment in the broadcasting industry, and is well aware of the complexity of identifying, and agreeing future modes of usage for equipment and premises, as well as the damaging impact that a large-scale TUPE transfer of staff can have. Although there is a Sky News Division within the company, this does not operate on a recognisable cost-centre basis, and does not publicly, or internally, report its finances.

9. To function as a separate cost centre within a new corporate structure, NewCo will need to negotiate contracts potentially running into hundreds of pages, in order to identify, separate out, and pay for facilities that are currently provided on a company-wide basis, with no sophisticated cost recovery, and with little accounting activity around it.

10. Previous instances of corporate segregation among existing UK broadcasters on this scale, have mostly taken place after periods during which internal markets have operated in the company concerned, laying a foundation for independent Limited status for the new entities. The largest precedents were the BBC's incorporation of its Broadcast, Technology, and Resources divisions, where comprehensive internal markets operated for up to 10 years before incorporation and divestment.

11. We predict that corporate separation will reveal significant cross-subsidy from Sky's other activities to its News Division, and although Disney has made a commitment to £100m funding per annum, there needs to be some understanding of the steps to be taken if this figure turns out to contain a significant structural loss within it.

12. From a business point of view, there are other unattractive features of the various divestment undertakings, for example the powerful role of the Monitoring Trustee to set the terms under which Sky News will trade with Sky PLC after the divestiture, a negotiation that any intending purchaser would want to be part of, and have full control of. Among the contractual arrangements overseen by the Trustee will be a seemingly exclusive right for Sky to deal with all Sky News air sales and sponsorships, giving it considerable influence over the income of the new company.

13. It is reasonable for us to be concerned about the impact on staff, and for that matter the impact on NewCo and Disney, of a corporate separation that could significantly increase costs for Sky News, and involve a long period of instability while new arrangements are devised, costed, and implemented.

14. A much cleaner and simpler outcome in this respect would probably be a successful purchase by Comcast, who intend to run Sky News as an integrated part of Sky itself, as at present, with no risk of cost and contractual problems due to separation. This arrangement also preserves the economies of scale Sky achieves by sharing capital assets, and, when necessary, moving staff, around the entire breadth of the business.

Workforce issues

15. As a trade union we believe we should be allowed to defend the terms and conditions of our members by forging strong and constructive relationships with their employers. In many companies and institutions this works well, but Prospect's BECTU sector has encountered hostile resistance from Sky PLC to any form of union organisation within its workforce.

16. Prospect does not expect preferential treatment for our members who work at Sky, but all employees should have the right to freely join a trade union and to have a voice over workplace changes without hostility.

17. Sustained efforts by the union to secure formal recognition with the company, as the foundation of a good working relationship, have been aggressively rebuffed. There has been intimidation of some employees brave enough to identify as union representatives, and the climate in the company is such that, if you are simply a passive member of the union, you are encouraged to believe that this fact is better kept secret.

18. An attempt by the union to secure recognition using the statutory mechanism available led to a well-resourced campaign by Sky PLC against the initiative, with the company engaging union-busters, and making threats that jobs would be moved out of the UK if staff voted to allow a union in.

19. We believe that Sky PLC is fundamentally an anti-union employer, and is consciously denying staff their rights to freedom of association under international law. We also suspect that this policy is in no small part driven by the attitude of the Murdoch Family Trust, and probably reflects the opinion of family members themselves.

20. There is no reason to believe that majority ownership of Sky PLC by 21st Century Fox will lead to any easement in this non-union climate, and we predict little change in the company's attitude to trade union engagement and recognition in its corporate social responsibility policies. Thus, we can see no benefit to those staff who are members of Prospect within Sky from the proposed sale to Fox, nor any benefit to those employees who are apprehensive about joining the union.

Summary:

- Undertakings about future governance covering only Sky News will leave the bulk of Sky PLC in a position where its already light-touch regulatory framework could be subject to non-compliance more frequently than at present.

- The proposed divestiture model in the case of 21st Century Fox winning a bidding war has major deficiencies, which may tempt the new owner to work round some of the provisions laid out in the agreements between parties.

- Sky PLC has blocked recognition of trade unions, and we predict will continue to do so if sold to 21st Century Fox.

- A Comcast purchase, at least if business as usual is an objective, will present far fewer problems than the proposed Disney remedy.

We hope that our views, including those that range beyond the simple public interest remedies invited by the consultation, will be taken into account.