



## MEDIA POLICY BRIEF 18

# Media plurality, the Fox-Sky bid, and the case for referral to Ofcom

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# Key messages

## Section 1 | Material change as a consequence of takeover

- With 100% control of Sky, Fox will be able to appoint all members of the Sky Board.
- There would therefore be no independent directors to exercise scrutiny over Sky's strategic direction or corporate culture.

## Section 2 | Regulatory framework and public interest grounds for referral

- The Secretary of State has broad discretion to determine the public interest grounds on which the bid might be referred.
- The proposed merger raises numerous public interest concerns, including concerns relating to accuracy and freedom of expression, plurality of views, and lack of commitment to broadcasting standards.
- At this stage, the Secretary of State need only reach a fair assessment of whether any of these public interest concerns might be valid.

## Section 3 | Reduced plurality of news production

- News production, already severely diminished and under further threat, would be further reduced by the proposed merger.
- In particular, one organisation and ultimately one family would directly control the dominant commercial news producer in the UK across television, radio and print.
- This would reinforce their dominance as news gate-keepers and their influence over opinion and policy formation.

## Section 4 | Potential for increased power and impact

- There is long-standing historical evidence of how media power and influence has been exercised by the Murdoch family, which will be further enhanced by the proposed merger.
- There should be four particular areas of concern:
  - 1) Potential impact on public opinion formation, resulting from the combination of control over Sky and News Corp's continuing domination of newspaper circulation.
  - 2) Potential impact on broadcast news agendas, as evidenced by research and by senior broadcasters.
  - 3) Scope for greater influence on the policy making process through enhanced access to government and senior policy makers.
  - 4) Potential impact on the commercial news media environment.

# Introduction

It has now been confirmed that 21st Century Fox, the Film and TV entertainment business controlled by the Murdoch family, wishes to acquire the 61% share of Sky plc (formerly BSkyB) that it does not already own. This proposed expansion of the Murdoch media business raises numerous issues which would engage public interest legislation.

21st Century Fox (Fox) was created in 2013 when Rupert Murdoch split his worldwide media business News Corporation into two separate entities: Fox – embracing satellite, cable, TV and film – and News Corporation, embracing print and online. Operation of these two entities is still controlled by Rupert Murdoch and his two sons: James Murdoch now runs Fox while Rupert and Lachlan Murdoch are joint executive chairmen of both Fox and News Corporation.

Sky was created in 2014 when BSkyB, the UK satellite TV arm, acquired Sky Italia in Italy and Sky Deutschland in Germany. By virtue of Fox's 39% stake in Sky, it was able to ensure that James Murdoch was reinstated as chairman in 2016 after stepping down in 2012 in the wake of the phone-hacking scandal. Nevertheless, because the remaining 61% of shares are not owned by Fox, the company is subject to scrutiny by external shareholders and independent directors not linked to the Murdoch family, a safeguard that will not be available when 100% ownership passes to Fox. In addition, full control by Fox will enhance Rupert Murdoch's media power through effective control of Sky's £12 billion annual revenues and £1.5 billion profits.

Now that formal notification of the bid has been made to the European Commission (EC), the Secretary of State for Media Culture and Sport (hereinafter referred to as "Secretary of State"), Karen Bradley, has ten working days to make a decision on whether to issue a "public interest intervention notice" under the 2002 Enterprise Act, referring the bid to Ofcom on media plurality grounds.

The Secretary of State confirmed in a statement to Parliament that she had already been in contact with Fox, and that EC and DCMS officials were involved in pre-notification discussions with the company.

While interested parties may now make representations, the 10-day deadline permits only a very short window for such representations and public debate. This policy brief sets out the relevant statutory framework and processes, the public interest concerns raised by the bid, and why the authors believe that there is sufficient evidence to warrant independent scrutiny of the bid on public interest plurality grounds.

# Section 1

## Material Change As A Consequence Of Takeover

21<sup>st</sup> Century Fox does not currently have control – de facto or de jure – of Sky. If the takeover were to go ahead then it would have 100% control. This would mean a material change in the power of 21<sup>st</sup> Century Fox over Sky.

### i. Change in control of shareholdings

Should Fox take over the remainder of Sky then it would have control of Sky shares. Once in control of Sky shares it would be able to use these to influence the direction of Sky, including the appointment of Sky Board members.

### ii. Change in control of Board membership

There are currently 11 members of the Sky Board:

- 3 members from 21<sup>st</sup> Century Fox – James Murdoch, Chase Carey (non-executive director) and John Nallen (non-executive director)
- 2 Sky executives - Jeremy Darroch and Andrew Griffith
- 4 independent non-executive directors
- 1 'senior independent director' - Andrew Sukawaty
- 1 independent deputy chairman - Martin Gilbert (Aberdeen Asset Management)

There is therefore a majority of independent members and only three members directly from 21<sup>st</sup> Century Fox. The membership of the Board could be changed, and the independent members replaced, should the Fox bid go through.

When reviewing whether Sky was 'fit and proper' to hold a broadcast licence, Ofcom stated that the membership of the Sky Board was material to its decision, and took account of the independent members and of James Murdoch's decision to step down as Chairman.<sup>1</sup>

## Section 2

# Regulatory Framework and Public Interest Grounds for Referral

### i. The regulatory framework

From the first Royal Commission on the Press in 1949 to the White Paper which preceded the 2003 Communications Act (CA03), governments of all persuasions, and Parliament have made repeated commitments to the vital importance to democracy of a plural media and the dangers of concentrations of media ownership. This philosophy was reaffirmed during the passage of the CA03 through amendments to the media mergers regime contained within the 2002 Enterprise Act (EA02). The EA02 specifies a number of public interest considerations which are carefully drafted to ensure the widest possible definition of plurality.

Thus, the legislation empowers the Secretary of State to intervene if she believes “that it is or may be the case that one or more public interest considerations are relevant” (section 42 (2)). Section 58 then details relevant public interest considerations, including national security, accurate presentation of news and free expression of opinion in newspapers, and a “sufficient plurality of views” in newspaper markets.

Further section 58 considerations are then articulated in the following terms:

(a) the need, in relation to every different audience in the United Kingdom.... for there to be *a sufficient plurality of persons with control* of the media enterprises serving that audience (italics added);

(b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.’

Crucially, section 42 (2) offers even more discretion for intervention than is detailed on the face of the Act: “For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 58 *or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.*” (italics added). Public interest considerations are therefore not restricted to those listed in section 58, though the Secretary of State would be required to seek parliamentary approval for any new public interest considerations.

### ii. Public interest considerations relevant to this merger

There are specific reasons why the broad public interest considerations outlined above are highly relevant to this merger:

Accuracy. Current anxieties about the proliferation of “fake news”, foreign intervention in democratic process, and the growing urgency for verified facts to inform democratic debate give this consideration more cogency. Any risk that this merger might pose to journalistic standards of accuracy would need to be addressed.

Free expression of opinion. Media mergers engage free expression concerns where they impact the ability of media enterprises and individual journalists to express a plurality of views. Until there is clarity on the restructured management and editorial control systems in the reformed Fox/News Corp/Sky suite of companies it is impossible to assess these concerns. Guarantees of editorial independence should be an absolute minimum.

Plurality of views within each market. This will require analysis of what constitutes sufficiency, and modelling of the current state of plurality in an increasingly consolidated media environment. This is particularly true in local markets where commercial radio news is now almost entirely dominated by Sky.

Commitment to broadcasting standards. Owners of media enterprises must have a genuine commitment to standards objectives set out in section 319 of the Communications Act, including accuracy and impartiality. We note that Ofcom conducted a 'fit and proper person' test with regard to James Murdoch in 2012 and found that his direction of BSkyB "repeatedly fell short of the conduct to be expected of him as a chief executive officer and chairman", although Sky overall met the fit and proper test<sup>2</sup>. Furthermore, James Murdoch specifically referred to Broadcasting Act standards objectives in his 2009 McTaggart Lecture as 'authoritarianism'.<sup>3</sup> These raise legitimate prima facie concerns about a commitment to accepted UK standards which merit independent investigation.

### iii. The decision making process

At this stage, the Secretary of State is only required to reach a fair assessment, on the basis of the evidence before her, of whether public interest concerns might be valid. It is not so much a question of 'beyond reasonable doubt' as 'within reasonable doubt'. If any doubts remain about the possibility of public interest considerations being engaged in relation to this merger, the Secretary of State should refer it to Ofcom for independent review while setting out in broad terms the nature of the public interest considerations.

In our view, given the history of the parties involved in this merger and the concerns being raised by a number of stakeholders, failure to give an intervention notice is almost certain to be liable to judicial review on the basis of irrationality, or illegality for example on the grounds that the decision was not made to a quasi-judicial standard.

In his 2012 report, Lord Justice Leveson made the following recommendation for referring media mergers:

I recommend that, before making a referral decision, the Secretary of State should consult relevant parties as to the arguments for and against a referral, and should be required to make public his reasons for reaching a decision one way or the other. This would provide a buffer against the criticism that a referral might be made for purely political reasons, and offer a welcome degree of transparency as to the concerns that have led to any referral.

These recommendations remain valid, and should be followed closely by the government as good practice in relation to this referral decision.

Arguments have been advanced by supporters of this merger that it should be waved through without scrutiny because the media landscape has been transformed since News Corp's bid for full control of Sky in 2010. In particular, they argue that a) new digital intermediaries and aggregators such as Facebook and Google have increasingly displaced traditional broadcasters and newspapers as the main distributors of news; and b) declining newspaper circulations and the growing power of social media should vitiate concerns around media plurality. We do not agree, and the following two sections provide more specific empirical arguments as to why there are good public interest grounds for an intervention notice.

## Section 3

# Reduced Plurality of News Production

### i. Decline of news production

News production includes news gathering, video/audio recording-writing-editing-design and publishing, as well as distribution. If there are fewer news organisations producing news there will, de facto, be less diversity in news production. Similarly, if there is less news production capacity within each news organisation – fewer journalists doing journalism as well as editing and publishing news – there will be less diversity in news production. As a consequence the public, politicians, parties and public bodies will rely more heavily on fewer, sparser news organisations. Those news organisations remaining will consequently have more political influence.

Over the last five years most major UK news organisations have reduced their news production capacity. 100 of the 160 journalists at the Independent and Independent on Sunday were expected to lose their jobs after the print newspapers closed in March 2016.<sup>4</sup> Also in March 2016 the Guardian announced plans to cut 250 jobs, 100 of them editorial,<sup>5</sup> with plans to reduce the number of positions further.<sup>6</sup> This represents a significant proportion of the Guardian's reported 968 core editorial staff in 2015.<sup>7</sup> In May 2016 The Telegraph Group, whose broadsheets employ about 660 journalists and editorial staff, announced a further wave of redundancies.<sup>8</sup> The group had announced 80 editorial job cuts in March 2013, and another 55 in October 2014.<sup>9</sup>

In the UK local press the decline in the number of journalists and editorial staff has been even more dramatic. 'Three of the four main local news groups have reported significant reductions in staff, including editorial staff, over the last five years'.<sup>10</sup> The number of journalists is believed to have fallen, Press Gazette reports, 'by at least half, from 13,000, since 2008'.<sup>11</sup>

'In Northern Ireland', Mike Gilson, previously editor of the Brighton Argus, told the Press Gazette in January 2017, 'the government employs 160 press officers, more than the entire number of private sector journalists working in the province'. The situation is such, Gilson went on, that 'whole areas of life that should be public and debated and questioned are now in danger of disappearing from public consciousness. Town halls, trust boards, courts, quangos all going about their business unhampered by tiresome questions with no light being shone in the corners. We are in danger of losing the ability to hold people to account, speak up for the powerless, those lost in the systems'.<sup>12</sup>

News production capacity is shrinking across the UK news media industry, with a consequent negative impact on the nature and range of public interest news reporting and plurality. This has numerous negative democratic implications. It means, for example, less reporting of local authorities, courts and public bodies. It means that the press is less able to perform its role as a 'scarecrow' – monitoring public life and raising the alarm when there is evidence of malpractice or corruption. It means that the public are not made aware of developments in public services – both positive and negative. There may be more content published online, but if this is for the purpose of marketing or entertainment then it does not address the public need for media plurality.

The proposed merger will lead to a further reduction in the plurality of news production in the UK, and a consequent increase in the influence of fewer owners – specifically the owners of Fox and News Corp.

### ii. Production vs distribution of news

Media consumption tells us little about whether diverse media are being produced, nor whether public expectations of, and democratic needs for, news are being met. More importantly, it blurs the

growing distinction between media distribution and production.

Prior to the digital era, most news organisations controlled both production and distribution. Major newspaper publishers produced news and distributed it via its print newspapers and subsequently via its branded websites. Yet, since the popularisation of the internet, and particularly of social media, there has been a substantial shift in the way in which people consume news (as illustrated in consecutive Reuters Institute Digital News Reports). We know, for example, that 28% of young people across 26 countries now rely on social media platforms as their main source of news.<sup>13</sup> This does not, of course, mean that these young people rely on social media platforms to produce the news, just that they rely on social media as distribution platforms for news produced by other individuals and organisations.

This shift to news consumption via technology platforms increases the importance of news *production* rather than *consumption* as a plurality variable. Knowing that many people use Facebook as 'their main source of news' does not tell us anything about news plurality, since all the public interest news they are consuming on Facebook could come from one provider. Moreover, since the technology platforms do not produce news themselves, the dynamics of influence over the political process are necessarily different.

### **iii. News production capacity within Fox and News UK**

In 2016 Sky employed more than 25,000 people across the UK and Ireland.<sup>14</sup> It is not clear what proportion of these work at Sky TV or Sky News. Sky News is, when one takes both radio and television into account, the dominant commercial producer of broadcast news across the UK.

In radio, almost every UK commercial station receives its national and international news from Sky News Radio (though often supplemented by some locally sourced news). This equates to more than 280 commercial stations across the UK. Sky's only real competitor in radio news production is the BBC.

In television there are only two UK-based 24-hour television news channels – Sky News and the BBC News Channel. The BBC considered closing or merging its news channel last year, a decision which has been shelved for the time being but which demonstrates the vulnerability of BBC news to progressive cuts in BBC funding. The prospect of closure could be reopened at any time. ITN produces news for ITV and Channel 4, but no longer broadcasts a 24-hour news channel. A successful Fox takeover would essentially mean that the UK television news production market would be split between three companies, in addition to a duopolistic market in the production of 24-hour television news (where Sky would be the only commercial provider).

Sky also dominates UK provision of pay-TV. By mid-2016 it had over 11 million UK subscribers. Virgin Media, by contrast had less than 4 million UK subscribers in 2016, and BT less than 2 million. The ability to control and direct these resources across these dominant broadcast channels goes directly to the question of media plurality.

When evaluating the public interest of this proposed merger, it is also necessary to take into account the news production capacity of News UK, the UK press arm of News Corporation and therefore under the direct control of the Murdoch family.

In 2013 News UK employed 'around 2,600 [people] in operations spanning journalism, printing, distribution and back-office support across the UK'.<sup>15</sup> Though no figures are available for the number of editorial staff at each News UK outlet, based on this figure News UK remains one of the largest news producers in the UK outside the BBC. By comparison, BuzzFeed UK had 80 UK staff in late November 2016, including senior management.<sup>16</sup>

Should Fox gain complete control of Sky News, the Murdoch's would therefore control directly the dominant commercial news producer in the UK across television, radio and print.

#### iv. News production as a measure of media plurality

Plurality of news production goes directly to the original purposes of media plurality as set out by Ofcom in 2015, namely:

- informed citizens who are able to access and consume a wide range of viewpoints across a variety of platforms and media owners;
- preventing too much influence over the political process being exercised by any one media owner.

In the digital era, diversity of news production has become an increasingly critical indicator of media plurality. Much of the infinite content that is published online is not UK public interest news, nor is it intended to be.

Given the reduction in the plurality of news production that would result from this takeover, and given the long history of involvement by the owners of Fox and News Corporation in the production and direction of news, we believe this are further compelling grounds for a public interest intervention by the Secretary of State.

## Section 4

# Assessing power and impact in a media merger

### i. The principle of power

At the heart of any decision on media ownership lies the concept of power. It is a fundamental principle of all democracies that the exercise of power must not become concentrated within a small group of individuals or organisations. This principle is not confined to the exercise of power over public opinion, but extends to power and influence over elite decision-makers.

Thus, approaches to media ownership which focus narrowly on opinion formation ignores the damage which can be inflicted by concentrations of media power in other ways: for example, over policy makers and the legislative agenda of Parliament; over policy thinkers and opinion-formers in dictating new ideas and driving change: over the judiciary, on issues around sentencing policy and approaches to criminal justice; and over relevant regulators, exerting both legal and editorial pressure to demand favourable decisions.

This definition of media power was explicitly included in Ofcom's advice to the Culture Secretary in June 2012, when it defined plurality with reference to the "desired outcomes of a plural market" and proposed two overarching principles:

- Ensuring there is a **diversity of viewpoints** available and consumed across and within media enterprises.
- Preventing any one media owner or voice having **too much influence** over public opinion *and the political agenda*.<sup>17</sup> (bold in original, italics added)

These principles, described by Ofcom as "the two proxies we have for a plural market", were adopted by the government in its 2013 consultation and have been widely accepted in the UK as a fair operational definition of the democratic underpinnings of media plurality.

The dangers of excessive influence concentrated in one corporate owner are particularly acute when there is long-standing historical evidence of how power has been exercised through both editorial and political influence. This is certainly true of News Corporation and Rupert Murdoch, whose biographers, editors and senior executives – as well as several British politicians – have provided copious evidence over the years of how he has sought to exercise that influence over both public opinion and the political agenda through control of information sources.

One study demonstrated how, following News Corporation's takeover of the Wall Street Journal ten years ago – despite guarantees of editorial independence – there was a marked ideological shift in its editorial agenda.<sup>18</sup> Such editorial direction is never a matter of direct instruction, but introduced through personnel selection and indirect pressure. One of his earliest biographers, William Shawcross relates how one of Rupert Murdoch's editors described him as running his empire "by phone and by clone".<sup>19</sup> Another senior corporate figure involved in News Corporation's China business has explained how Murdoch

very rarely issued directives or instructions to his senior executives or editors. Instead, ... he would make known his personal viewpoint on a certain matter. What was expected in return, at least from those seeking tenure of any length in the Murdoch Empire, was a sort of 'anticipatory compliance'.<sup>20</sup>

One powerful example emerged at the Leveson Inquiry, when former Prime Minister Sir John Major testified that Rupert Murdoch had clearly linked his support for the Conservatives at the

1997 general election with the party's position on Europe:

If we [the Conservative Party] couldn't change our European policies then his papers could not and would not support the Conservative government. As I recall, he used the word 'we' when referring to his newspapers, he didn't make the usual nod towards editorial independence.

Another frequently cited example is how, in 2003, all 173 News Corporation newspapers worldwide supported the Iraq war.<sup>21</sup>

There is an important commercial element to this aspect of power. Despite Rupert Murdoch's insistence at the Leveson Inquiry that "we have never pushed our commercial interests in our newspapers", News Corporation has long demonstrated an understanding of how its media properties can enhance its worldwide commercial activities, calling on a huge editorial presence to mobilise interest in new product launches, pricing innovations, major sports contracts or Hollywood movies. An example emerged in 2010 when an Australian News Corp executive reportedly told an advertising conference about a strategy to make sure that News Corp media outlets – including its television stations – would prominently feature Fox Studio movies while excluding coverage of rival studios. This story was not reported in either of News Corp's UK papers the Sun or the Times.<sup>22</sup>

For these reasons, it would be entirely wrong for the Secretary of State, in making a decision about a referral to Ofcom, to be distracted by the proliferation of online and social media outlets or by an apparent fragmentation of audience share within the mainstream media. Careful consideration must also be given to the impact of greater dominance which the proposed takeover will afford the Murdoch family as ultimate controllers of both News Corp and Fox.

## ii. Impact and its component parts

In its measurement framework, Ofcom proposes three criteria for assessing a news media market's plurality; availability, consumption and impact. It concludes that availability metrics "offer limited insight and on their own are not sufficient". The regulator itself therefore rightly warns against placing too much weight on emerging but mostly unfrequented online sites which are often little more than opportunities for individuals or groups to voice strongly held opinions.

Ofcom places greater emphasis on consumption, and has attempted to overcome the problem of cross-media use in a convergent environment through its own bespoke "Share of References" scheme, first employed for its public interest test of News Corp's proposed takeover of BSkyB in 2010. While superficially attractive in attempting to deal with measurement across media, we believe this approach to be flawed as a means of establishing how media *power* is distributed in the UK<sup>23</sup>. It can certainly not be treated as a sufficient indicator of media power in isolation from Ofcom's third category, impact.

It is this criterion which, in broadest sense, is the best proxy for the exercise of power and which, in the case of News Corporation's bid for the whole of Sky, requires thorough investigation. In terms of this proposed acquisition, there are three aspects of impact which need proper exploration.

### a. Impact on public opinion formation.

As has long been acknowledged in the field of sociological "effects" studies, it is never possible to make precise inferences about how and precisely which media contribute to shaping political attitudes and opinions. While Ofcom has attempted to introduce quantitative "proxies" in its measurement approach, it recognises that these are inadequate in isolation and must be complemented by more qualitative measures which would be tailored to any individual bid. Any such approach would need to recognise, in particular, the ability of those with significant control

over mainstream media news publications to act as gatekeepers for news and opinion dissemination.

This applies particularly to the printed (or electronic) word, because broadcasting is subject to heavy impartiality regulation. Britain's national newspapers, in particular, have a long tradition of being highly partisan, and its popular press frequently elides news and comment (an issue raised often by politicians during their evidence to the Leveson inquiry). While impassioned, one-sided argument is an integral element of a free press, it is also intuitively more likely to shape opinions than the carefully balanced and detached approach of broadcasters. Given News Corporation's continuing domination of newspaper circulation, further expansion of its power should be a *prima facie* cause for concern.

## **b. Impact on news agendas**

Established print news brands have considerable power to set news agendas both for broadcasters and for online news sites which have limited newsgathering resources. There is evidence from both the 2015 general election and the 2016 EU Referendum that broadcasters were heavily influenced by the front page editorialising of the UK's press, which in turn was heavily dominated by vociferous pro-Leave campaigning both in choice of stories and in editorial comment.

In June 2014, when working as the BBC's Economics Editor, Robert Peston expressed frustration at the way in which BBC News was, in his view, "completely obsessed by the agenda set by newspapers". He continued: "The safest thing is to go with what the newspapers are going with, even at a time when the influence and power of newspapers is radically declining."<sup>24</sup> When asked to comment on Peston's view the following week Head of Sky News John Ryley said: "I have always been shocked from the very first time I started in [TV] news at the reliance on newspapers."<sup>25</sup>

In addition, the influence of newspaper agendas is manifested directly in the proliferating newspaper reviews across all channels: twice each evening on the Sky and BBC News channels, at the end of every edition of *Newsnight*, on Marr's Sunday morning show and frequently identified and discussed on the BBC's *Daily Politics* on TV and *Today* programme on radio. Sky News, the BBC and ITV all tweet the front pages of next day's national newspapers every evening, and their programmes rarely if at all feature online-only publications such as *Buzzfeed*, *Huffington Post* and *Vice News*. Once again, therefore, broadcast agendas are dominated by daily print publications, where News Corporation titles continue to hold a commanding position. This can only be exacerbated where the same organisation is entirely responsible for the editorial output of Sky News and – following its acquisition by News Corporation – the national commercial radio station TalkSport.

## **c. Impact on policy formation**

Third, there is the potential power to influence government ministers, parliamentarians, senior civil servants, regulators and others responsible for developing and implementing public policy. Analysis by the Media Reform Coalition of meetings between Rupert Murdoch and his senior executives and senior government ministers has demonstrated that they met twenty times in the 18 months from April 2015 to September 2016, including ten meetings with the Prime Minister or Chancellor. A further eight were with the Culture Secretary.<sup>26</sup>

The sheer scale of such direct access to government – which exceeds that of every other media organisation, including the BBC – has clear implications for the exercise of power over politicians and policy makers. Such influence applies both to policy making of direct commercial and competitive interest to News Corp and Fox, and more widely to policy areas in which News Corp media have expressed strong views.

Thus, in his 2013 book *Democracy Under Attack*, former Guardian journalist Malcolm Dean

demonstrated through a series of case studies how press influence operates in social policy areas including law and order, drugs and asylum seekers.<sup>27</sup> In his analysis of the phone-hacking scandal, Nick Davies (the journalist most responsible for its exposure) has suggested that Labour Party policies which included the buying in of private medical businesses by the National Health Service and a diluted form of “Sarah’s Law” – the publication of names and addresses of convicted sex offenders – resulted directly from discussions with key figures at Murdoch’s Sun and News of the World newspapers.<sup>28</sup>

#### **d. Impact on commercial environment for news media**

With the dramatic reduction of print advertising, and with digital advertising increasingly dominated by Google and Facebook, the sustainability of news media will depend increasingly on paid relationships (subscriptions or pay per access). Full acquisition of Sky will enhance Fox and News Corp’s ability to combine with Sky to offer discounted subscriptions and maximise revenues through direct payment, thereby disadvantaging independent competitors and ultimately reducing available news plurality. While contracting behaviour between Sky and News Corp subsidiaries predates the proposed transaction – for example, Sky Sports’ exclusive distribution partnership with News UK makes Premier League clips available across The Sunday Times, The Times and The Sun digital services – full ownership of Sky can only increase the incentive for these businesses to collaborate much more closely.

These economies of scale and cross-fertilisation across platforms and media outlets will be further enhanced by Sky’s platform as the second largest Internet Service Provider (ISP) in the UK and an emerging player in the mobile market.<sup>29</sup> At the moment, all ISPs are covered by European rules of net neutrality which prevent them from engaging in differential pricing. Once these rules are repatriated to the UK, it is entirely possible that Ofcom will come under pressure from Fox and News Corp to abandon the principle of net neutrality, thereby allowing Sky customers privileged cheaper access to Fox and News Corp media products.

The consequences for plurality across all genres of media output – from news and information to TV drama and film – could be profound.

Evidence from senior politicians to module 3 of the Leveson Inquiry provided abundant evidence of how unduly powerful media corporations influence policy and regulatory decisions by exerting pressure on governments. Four successive prime ministers admitted, either implicitly or explicitly, that they were bound too closely to News Corporation and Rupert Murdoch. When the same company is seeking to consolidate and expand its sphere of influence through complete control over one of the most influential broadcasters in the country, we believe it is incumbent on the Culture Secretary to ask for an independent analysis of the implications for those organisations’ power and influence over the media environment.

## Closing remarks

This short policy brief is not intended to be a detailed examination of the plurality concerns raised by Fox's bid to take over the remaining 61% of Sky. It is intended to illustrate the range of significant reasons why this bid raises significant plurality concerns, and to highlight the broad discretion the Secretary of State has when making a decision whether to refer the bid to Ofcom.

Once a public interest intervention notice has been issued then there will be greater opportunity to make more detailed analyses and submissions as to the potential impact of the takeover.

The authors of this note are amongst those who believe such an opportunity is necessary and warranted.

# Notes

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<sup>1</sup> See paragraphs 45-46 in Ofcom's Decision Under Section 3(3) Of The Broadcasting Act 1990 And Section 3(3) Of The Broadcasting Act 1996: Licences Held By British Sky Broadcasting Limited

<sup>2</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0022/32485/bskyb-final.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0022/32485/bskyb-final.pdf)

<sup>3</sup> <http://image.guardian.co.uk/sys-files/Media/documents/2009/08/28/JamesMurdochMacTaggartLecture.pdf>

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<sup>16</sup> [https://www.buzzfeed.com/marieleconte/buzzfeed-uk-editorial-staff-ask-for-union-recognition?utm\\_term=.cb9VQmDpG#.bse3akdMX](https://www.buzzfeed.com/marieleconte/buzzfeed-uk-editorial-staff-ask-for-union-recognition?utm_term=.cb9VQmDpG#.bse3akdMX)

<sup>17</sup> "Measuring media plurality: Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport", Ofcom, June 2012, p8 (emphasis in original)  
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<sup>18</sup> Michael W. Wagner & Timothy P. Collins, "Does Ownership Matter?" *Journalism Practice*, 2014, 8:6, pp 758-771.

<sup>19</sup> Ibid, p244

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<sup>22</sup> Roy Greenslade, "News Corp plan to deny movie coverage reveals its misuse of power", *The Guardian*, 28 October 2010: <http://www.guardian.co.uk/media/greenslade/2010/oct/28/news-corporation-bskyb>. Greenslade quotes the *Sydney Morning Herald* and *Hollywood Reporter* as his sources.

<sup>23</sup> For a critique of Ofcom's approach, see Steven Barnett "Is Ofcom's "Share of References" Scheme Fit for Measuring Media Power?" <http://blogs.lse.ac.uk/mediapolicyproject/2013/12/04/media-plurality-series-is-ofcoms-share-of-references-scheme-fit-for-measuring-media-power/>

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[https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/26648/uk\\_telecoms.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/26648/uk_telecoms.pdf), Figure 4.17.

For Sky’s launch of its mobile network, see: <http://www.wired.co.uk/article/sky-mobile-network-price-details>

# LSE MEDIA POLICY PROJECT

## **ABOUT:**

The Media Policy Project aims to establish a deliberative relationship between policy makers, civil society actors, media professionals and relevant media research. We want policy makers to have timely access to the best policy-relevant research and better access to the views of civil society. We also hope to engage the policy community with research on the policy making process itself.

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