[GB] Regulator Recommends News Corp Bid for BSkyB be Referred to Competition Commission on Plurality Grounds

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The major controversy over News Corp's bid for 100% of BSkyB has reached a further stage with the publication by Ofcom of its report on the plurality implications of the bid, recommending that the minister refer it to the Competition Commission for further investigation. The bid has already been cleared on competition grounds by the European Commission (see IRIS 2011-2/4).

Under the Enterprise Act 2002, the Secretary of State for Culture, Media and Sport has the power to specify a "public interest consideration" in a proposed merger relating to the need for a sufficient plurality of persons with control of media enterprises. Ofcom undertakes a preliminary investigation of this issue and the minister may then refer it to the Competition Commission. Ofcom examined both the effects of the proposed transaction on plurality immediately after it is concluded and issues that may arise later. It determined that the relevant audience is that for cross-media news and current affairs, including TV, radio, newspapers and the internet. News Corp already owns 39.1% of BSkyB and is the UK's largest provider of newspapers, with over 35% of national newspaper circulation. According to Ofcom, the proposed acquisition would see News Corp consolidate its second place in audience reach in news consumption (after the BBC), rising from 14% to 24%. It would also reduce the number of providers of news, through BSkyB ceasing to be a distinct media enterprise. In terms of audience share, the proposed transaction would combine the second and fourth largest news providers. Ofcom did not consider that it was established that Sky News would remain as an independent voice alongside News Corp's other outlets. The proposed transaction might also permit integrated products and cross-promotion amongst News Corp products.

Examination by the Competition Commission will take 6-8 months; after that period BSkyB may be too expensive for the acquisition to take place. The minister thus decided that, though he is minded to refer, he will defer the reference so that he can examine whether undertakings from News Corp may mitigate the problems identified by Ofcom and made a reference unnecessary.

Department for Culture, Media and Sport, "Culture Secretary Jeremy Hunt Makes Statement on Proposed Merger", Press Release, 25 January

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