

[GB] CMA provisional findings on 21st Century Fox and Sky Plc merger

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Following last year's phase one enquiry by Ofcom and the Competition and Markets Authority (CMA) concerning the proposed merger between 21st Century Fox and Sky Plc (see IRIS 2017-8/26), the CMA has commenced the phase two enquiry, publishing its provisional findings on 23 January 2018. The CMA concluded that Fox taking full control of Sky is not in the public interest due to media plurality concerns. However, the CMA considered that Fox and Sky had a genuine commitment to broadcasting standards in the UK.

The CMA observed that the Murdoch Family Trust (MFT) controls Fox and News Corporation (News Corp), which between them already have a significant interest in UK news, whether television, radio, online or newspaper platforms. The MFT news outlets are consumed by nearly a third of the UK population, and have a combined share of public news consumption greater than all other UK news providers, except the BBC and ITN. If Fox, and as a consequence MFT, had control of Sky Plc's Sky News then this would give MFT too much influence over public opinion and the political agenda. Despite the broad range of other news providers, the CMA did not consider they have sufficient presence to moderate or mitigate the increased MFT influence if the merger proceeded. Anne Lambert, the Chair of the CMA independent investigation group, said: "Media plurality goes to the heart of our democratic process. It is very important that no group or individual should have too much control over public opinion and the political agenda". The CMA has presented three possible remedies to address media plurality concerns. Firstly, prohibit the merger. Secondly, undertake structural remedies, including the recommendation that Sky News be spun off into a new company, or the divestiture of Sky News. Thirdly, behavioural remedies, including enhanced requirements regarding the editorial independence of Sky News.

The new Secretary of State for Digital, Culture, Media and Sport, The Right Honourable Matt Hancock MP, laid the CMA's preliminary findings before Parliament. The Secretary of State exercises a quasi-judicial decision-maker role concerning the proposed merger. The CMA's inquiry group has until 1 May 2018 to provide the Secretary of State with its final report. The Secretary of State will make the final decision by 14 June 2018. The Secretary of State has confirmed that the CMA recognises that the proposed acquisition by The Walt Disney Company of some of Fox's assets, including Sky, may settle the concerns about

the Fox Sky merger. Despite such an acquisition being uncertain in its timing and form, the CMA will take account of any implications of the Disney transaction relative to the proposed remedies to ensure media plurality. The CMA's investigation into the commitment of Fox, Sky and MFT to maintaining broadcasting standards concluded that they all had a genuine commitment, and that Fox taking control of Sky was thus not likely to work against the public interest. Fox was an established broadcaster in the UK, having held licences for over twenty years. The broadcaster had implemented practices and procedures to ensure broadcasting standards. Although there had been issues about some of its unedited simulcast international feeds into the UK, this did not outweigh the overall comprehensive steps taken to maintain a committed broadcasting standard in the UK.

Fox News had faced sexual harassment allegations by US employees and whilst they were of a serious nature the CMA had provisionally determined that these did not directly relate to the attainment and maintenance of broadcasting standards and should therefore not detract from Fox's (and MFT's) UK commitment to broadcasting standards. Likewise, Sky had a good track record in the UK of maintaining broadcast standards.

MFT's News Corp had faced serious shortcomings with its News of the World newspaper prior to 2012, having failed to comply with press standards and the law. However, News Corps had undertaken a drastic intervention, including the closure of the News of the World and implementing new processes and procedures for its other New Corps titles. The CMA provisional findings showed there had been no cause for concern since these new procedures had been introduced.

Competition and Markets Authority, Anticipated acquisition by 21st Century Fox, Inc of Sky Plc: Provisional findings report, 23 January 2018

https://assets.publishing.service.gov.uk/media/5a71fe2be5274a7f9c5862d4/provisional_findings_report.pdf

Competition and Markets Authority, "CMA provisionally finds Fox/Sky deal not in the public interest", 23 January 2018

<https://www.gov.uk/government/news/cma-provisionally-finds-foxsksy-deal-not-in-the-public-interest>

