



Guidance note for public interest  
test on the anticipated acquisition  
of British Sky Broadcasting plc by  
News Corporation

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## Background and Ofcom's role

On 3 November 2010 News Corporation notified the European Commission of its intention to acquire the shares in BSkyB it does not already own. On 4 November the UK Secretary of State for BIS issued a European intervention notice specifying the public interest consideration in section 58 of the Enterprise Act 2002 concerned with the sufficiency of plurality of persons with control of media enterprises, which is: "the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience". The Secretary of State requested Ofcom to report by 31 December on the effect of this consideration on the proposed acquisition.<sup>1</sup> This short document outlines how we will proceed.

Our role is to conduct an initial investigation into the public interest consideration and to provide advice and recommendations on it which may be relevant to the Secretary of State's decision on whether he should refer the case to the Competition Commission for further analysis. We will focus on the effects of the merger on the consideration specified by the Secretary of State, and will not deal with competition issues. These fall within the jurisdiction of the European Commission. Our report to the Secretary of State will also include a summary of any representations about the case that we will receive from the merging parties and other interested parties.

It is for the Secretary of State to decide whether to refer the case to the Competition Commission in light of our report.

## Process guidance

Our process is divided into two main parts:

- Information gathering and analysis
- Defining our advice to the Secretary of State

### Information gathering and analysis

Publication of the invitation to comment: We expect to publish an *invitation to comment* on our website on **5 November**. This document will outline the points on which we would particularly welcome stakeholders' input and explain how to make representations to Ofcom on this issue. We will invite written responses, supported by evidence, to be submitted no later than **19 November**.

Engagement with the merging parties: Ofcom might request information from the merging parties. Requests for information will be made during the first week. Soon after the requests are made, the merging parties should discuss with Ofcom the availability of the requested

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<sup>1</sup> This European intervention notice also requires that the Office of Fair Trading advises the Secretary of State on the considerations relevant to the making of a reference under section 22 or 33 of the Enterprise Act 2002 which are relevant to the decision on whether to make a reference under the provision of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (Statutory Instrument 2003/1592). These are essentially jurisdictional matters. The Office of Fair Trading is also required to provide a summary of representations received from third parties relating to the media plurality considerations. See further [OFT Mergers - Jurisdictional and procedural guidance](#) (paragraphs 9.11 to 9.16).

data and the form in which it will be made available. The deadline for supplying the information will be short, and in any case no later than **19 November**. After that, Ofcom may also offer a meeting to discuss points raised in third parties' submissions and any other associated questions.

Engagement with third parties: Meetings with third parties may also be held where appropriate and as allowed within the timescale set by the Secretary of State.

Ofcom strictly observes confidentiality in all aspects of its operations. This applies to material supplied by both the merging parties and other interested third parties. We will give the Secretary of State all relevant submissions (including confidential ones) to enable him make his decision. We will require a full non-confidential version of any confidential submissions, together with reasons why information should be treated as confidential.

Internal analysis: Ofcom will begin its analysis of this matter from today. This will draw from stakeholders' submissions, information that Ofcom already has available in-house and any relevant research it is possible to conduct in the timescale set by the Secretary of State.

### **Defining our advice to the Secretary of State**

As soon as practicable we will consolidate the results of our internal analysis and the points raised by stakeholders to reach a provisional position on our recommendation to the Secretary of State.

If our provisional position were that this case raises potentially material public interest issues we would send an *issues letter* to the merging parties, setting out the core arguments and evidence in the case. If appropriate and practicable, the letter would include the offer of an *issues meeting* where the merging parties could discuss our draft position and the analysis underpinning it. We envisage an interval of 2 or 3 working days between receipt of any issues letter and the issues meeting. The parties may also submit a written response to our provisional position within 5 days from receipt of the issues letter.

Ofcom will finalise its report and send it to the Secretary of State by **31 December**, together with any other material that may be relevant to his decision.

The Secretary of State will decide whether the case should be referred to the Competition Commission for further analysis. The Secretary of State will publish his decision and our report simultaneously.

If the Secretary of State makes a reference to the Competition Commission, Ofcom will make all relevant information in its possession available to the Competition Commission to allow it to conduct its analysis.

### **Next steps and key dates**

- **5 November:** publication of the invitation to comment
- **19 November:** deadline for merging parties' responses to Ofcom's information requests and written representations from all stakeholders.
- **By 31 December:** Ofcom submits its report (including its recommendation and a summary of stakeholders' submissions) and any other relevant material to the Secretary of State.