



Invitation to comment for public
interest test on the proposed
acquisition of Sky plc by Twenty-
First Century Fox, Inc.

Invitation to comment

Publication date: 16 March 2017

Closing date for submissions: 30 March 2017

Introduction

- 1.1 On 3 March 2017 Twenty-First Century Fox, Inc. notified the European Commission of its intention to acquire the shares in Sky plc it does not already own. On 16 March 2017 the Secretary of State issued a European intervention notice requesting Ofcom to report by 16 May 2017 on the effects of the proposed transaction on:

“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 “plurality public interest consideration”) and

“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”; (the “broadcast standards public interest consideration”).¹

- 1.2 Ofcom has today published a guidance note on our website², setting out the process and timetable for preparing our report on the public interest considerations set out by the Secretary of State.

The plurality public interest consideration

- 1.3 We consider the public interest in light of the relevant statutory framework whereby Parliament has attached significance to the need for sufficient media plurality in the functioning of a healthy and informed democratic society.
- 1.4 Our provisional view is that in undertaking an initial investigation of this public interest consideration and providing advice and recommendations to the Secretary of State, we should apply the reasoning we set out in our measurement framework for media plurality, published in 2015³.
- 1.5 Subject to responses to this invitation to comment (ITC), we therefore provisionally consider news and current affairs to be the relevant genres to consider. Specifically, we will consider:
- availability;
 - consumption;
 - impact; and
 - contextual factors.
- 1.6 **Availability metrics** measure the number of news providers available at the point of consumption. Both the number of different news sources available on each media platform and across all media are relevant.

¹ Section 58(2C)(a) and (c) of the Enterprise Act 2002.

² <https://www.ofcom.org.uk/consultations-and-statements/category-3/public-interest-test-sky-fox/>

³ Available at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/media-plurality-framework>

- 1.7 **Consumption metrics** measure the number of people using news sources and the frequency and/or time that they spend consuming it. Metrics capable of quantifying cross-media consumption are particularly important. Sector-specific consumption metrics should also be used.
- 1.8 **Impact metrics** help inform how news content can influence the formation of people's opinions. While measuring the impact and influence of news sources on consumers is complex, proxies for impact can be used. Proxies to consider include personal importance, impartiality, reliability, trust and the extent to which a news source helps people make up their minds about issues in the news
- 1.9 **Contextual factors:** are an integral part of our measurement framework which help to interpret the quantitative data. Contextual factors may include but are not limited to:
- governance models;
 - funding models;
 - potential power or editorial control exercised by owners, proprietors or senior executives;
 - internal plurality (i.e. the range of internal voices and opinions within an organisation);
 - market trends and potential future developments, including changes to news consumption online and via social media; and
 - regulation and oversight (including relevant statutory obligations such as the due impartiality requirements within Ofcom's Broadcasting Code)
- 1.10 We are seeking views on all the issues set out above and any other issues you think we should consider in relation to the impact of this particular change of control of Sky on the plurality public interest consideration.

The broadcast standards public interest consideration

- 1.11 Ofcom has not previously been asked to consider a merger in which the Secretary of State has intervened in relation to the broadcast standards public interest consideration.
- 1.12 The objectives set out in section 319 of the Communications Act 2003 are:
- (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;

- (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
- (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
- (fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
- (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
- (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
- (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
- (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
- (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

- 1.13 Ofcom has a duty to set such standards for the content of programmes to be included in television and radio services as appear to us best calculated to secure these objectives, which we do in our Broadcasting Code.⁴ All broadcast licensees are required by a condition of their licence to abide by the Broadcasting Code.
- 1.14 Subject to responses to this invitation to comment, we provisionally consider that all genres of content and all the broadcast standards objectives concerned are relevant to this public interest consideration.
- 1.15 We are seeking views on all the issues set out above and any other issues you think we should consider in relation to the impact of this particular change of control of Sky on the broadcast standards public interest consideration.

⁴ <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

Advice and recommendation to the Secretary of State

- 1.16 Overall, Ofcom will consider how the proposed acquisition may affect each of the public interest considerations, taking account of representations and analysis of relevant information.
- 1.17 Given the limited time for Ofcom's initial investigation and report on the effect on the media public interest consideration, we are also interested in third parties' views on potential remedies or mitigations to any public interest concerns identified by third parties. These will be passed to the Secretary of State to help inform her decision (and to the Competition and Markets Authority (CMA) in light of a reference).

How to make submissions

- 1.18 Ofcom invites written submissions to be made **by 30 March 2017**. We are seeking responses that provide views, supported by evidence, on the specific questions detailed above, or on other considerations stakeholders consider relevant. Due to timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.
- 1.19 Please make representations via:
- 1.19.1 The online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/public-interest-test-sky-fox/>
 - 1.19.2 By email - especially for larger submissions - particularly those with supporting charts, tables or other data – to PublicInterestTest2017@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- 1.20 Responses may alternatively be posted to the address below, marked with 'Fox / Sky public interest test'.
- Rebecca Taylor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- 1.21 We do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- 1.22 Ofcom strictly observes confidentiality in all aspects of its operations. This applies to material supplied in response to this invitation to comment. We will give the Secretary of State (and the CMA in the event that this acquisition is referred by the Secretary of State) all relevant submissions (including confidential ones) to enable her to make her decision. If your submission includes material which is confidential, we will require a full version with confidential information omitted, together with reasons why the submission should be treated as confidential, in order to help establish what it may and may not be appropriate to refer to publicly in the course of this work.

- 1.23 Please note that if any person provides information to us in this context, which is false or misleading in a material respect, it is an offence which, on conviction, may be punished by a fine and/or two years' imprisonment.⁵
- 1.24 Meetings with stakeholders may also be held where appropriate. If you would like to request a meeting with Ofcom to discuss your submission, you should send a request via e-mail to PublicInterestTestMeetings2017@ofcom.org.uk explaining why a meeting is required in addition to your written submission. We will consider these requests on an individual basis. Due to the timescales set by the Secretary of State, we may not be able to fully consider meeting requests made after 30 March 2017. We anticipate holding meetings during the period 28 March – 5 April.

⁵ Section 117 Enterprise Act 2002