



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

Publication date:

16 March 2017

Background and Ofcom's role

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 UK Secretary of State for Culture, Media and Sport issued a European intervention notice asking Ofcom to review the transaction in the light of the following public interest considerations:

“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”; 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 Secretary of State requested Ofcom to report by 16 May 2017 on the effect of the proposed acquisition on these considerations.¹ This short document outlines how we will proceed.

Our role is to conduct an initial investigation into the public interest considerations and to provide advice and recommendations on the Secretary of State's decision on whether she should refer the case to the Competition and Markets Authority (CMA) for further analysis. We will focus on the effects of the merger on the considerations 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 CMA 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 have today published an *invitation to comment* on our website. This document outlines the points on which we would particularly welcome input and explains how to make representations to Ofcom on this issue. We invite written responses, supported by evidence, to be submitted no later than **30 March 2017**. Due to

¹ This European intervention notice also requires that the CMA 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 CMA may also provide a summary of representations received from third parties relating to the media plurality considerations. See further [Mergers: Guidance on the CMA's jurisdiction and procedure](#).

timescales set by the Secretary of State, we may not be able to fully consider responses submitted after this date.

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.²

Engagement with the merging parties: Ofcom intends to 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 data and the form in which it will be made available. The deadline for supplying the information will be short, and in any case will be no later than **31 March 2017**. 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 might also request information from third parties, during the first week.

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 her make her 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 analysis will draw from stakeholders' submissions, information that Ofcom already has available in-house and any relevant further research that is necessary and 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 two or three 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 five days from receipt of the issues letter.

Ofcom will finalise its report and send it to the Secretary of State by **16 May 2017**, together with any other material that may be relevant to her decision.

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

² Section 117 Enterprise Act 2002.

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

Next steps and key dates

- **30 March 2017:** deadline for submissions to the invitation to comment
- **31 March 2017:** deadline for merging parties' responses to Ofcom's information requests.
- **By 16 May 2017:** Ofcom submits its report (including its recommendation and a summary of stakeholders' submissions) and any other relevant material to the Secretary of State.