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Dear Nicole

**Ofcom Review of Media Ownership Rules**

Further to our recent conversation, this letter represents British Sky Broadcasting Group Plc (Sky)'s response to Ofcom's consultation on the proposed changes to the Media Ownership Rules. In the short time available, half the usual period, Sky has not been able to provide any evidence in respect of the issues raised.

Sky notes the principal purpose of Ofcom's current review is to "*consider specifically the impact of the current local ownership rules on the long-term sustainability of local media*", in response to a request from Government following its Digital Britain Final Report. The timing of this request does not explain the short period for consultation; according to Ofcom's Annual Plan, Ofcom began work on this review before March of this year.

Sky welcomes the liberalising approach taken by Ofcom in relation to the local media ownership rules. However, Sky considers that Ofcom's review in respect of national and general media ownership rules is inadequate, and that the recommendation not to remove regulation is a missed opportunity to deregulate further, as well as a potential breach of Ofcom's duty to ensure that its regulatory activities do not involve "*the maintenance of burdens which have become unnecessary*".

***Ofcom's analysis is incomplete***

Ofcom has limited its review to an examination of changes in certain metrics since 2003/4, concluding that the changes are not sufficient to warrant further deregulation. Even if the 'evidence' presented did support the maintenance of the current rules, which is disputed, the starting position for Ofcom's review should have been to ask whether the maintenance of detailed *ex ante* rules is justified *per se*, i.e. whether there is a particular issue around plurality or diversity of news provision that can only be prevented or resolved through such specific rules. Only once this assessment has been made can Ofcom make any recommendation to the Secretary of State as to whether the existing rules should be maintained, or removed.

Ofcom's conclusion that the national television media ownership rules (and in particular, the rule prohibiting cross-media ownership of Channel 3 and national newspapers, and the 'appointed news provider' rules) should not be removed is not supported by the evidence presented. Ofcom has played down the significant increase in the use of the internet as a main source of news, and the relative decline in use of national newspapers. Figure 4 in the

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consultation document demonstrates that the internet is now of comparable importance to newspapers as a main source of news.

Ofcom has also failed to consider the various different sources of news regularly accessed by the same individuals. In paragraph 4.23 Ofcom merely notes that *"use of these media as a main source of news is only part of a complex picture of consumption habits today. This does not consider secondary sources of news. Research suggests that at least a fifth of adults visit national news websites."* This is a material oversight in the review. In this regard we direct Ofcom to the Competition Commission's analysis of plurality of news provision undertaken as part of its assessment of Sky's acquisition of a 17.9% shareholding in ITV Plc (see Appendix I of the Commission's Final Report). In its report, the Commission examined not only the metrics used by Ofcom in its present review but also examined how individuals use various media to access news. Sky notes that Figure 6 in Appendix I shows that about one-third of the population do not actively watch television news, a material factor not reflected in Ofcom's current review. Ofcom has not explained why it did not consider the Competition Commission's report as part of its review, despite considering a variety of other sources.

In its 2006 review, Ofcom conducted a significant piece of benchmarking research against media ownership rules in other European countries. Whilst that research was by no means comprehensive, it did provide some context for the UK rules and Ofcom's review. Ofcom should have updated this research as part of its review, and should have examined why a number of jurisdictions have no media ownership rules at all. Furthermore, it is wholly inappropriate for Ofcom to expect stakeholders to perform this exercise in Ofcom's place in response to the consultation questions (Question 1 of the consultation).

Sky notes that any increase in the share of viewing of ITV's portfolio of digital channels is irrelevant to any assessment of whether the Channel 3 licensee ought to continue to be subject to special media ownership rules.

### **Conclusion**

Ofcom's assessment is therefore flawed as it is based on an unrealistic and overly-simplistic view of a media sector in which consumers single source their news, ignoring the plethora of alternatives. ITV1's declining share of viewing generally, and more specifically in relation to news, allied to the rise in the use of internet-based news services and the relative decline in the importance of newspapers, support a relaxation of the current rules.

Had Ofcom undertaken a thorough review, from first principles and in the manner described above, it would have concluded that existing UK and European competition rules, including merger control rules, are sufficient to achieve Parliament's objectives, as Ofcom's consultation document acknowledges (at paragraph 1.7).

Should you have any further questions, please do not hesitate to contact me.

Yours sincerely



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