



## **NUJ submission to the Directorate-General for Competition of the European Commission**

### **On the prior notification of a concentration (Case M.8354 — Fox/Sky)**

**March 2017**

1. The National Union of Journalists (NUJ) welcomes the European Commission's announcement to consider the case and notes the notification of a proposed concentration pursuant to Article 4 of the Council of the European Union's regulation (EC) No 139/2004 (1) by which the undertaking Twenty-First Century Fox Inc (Fox USA) acquires – within the meaning of Article 3(1)(b) of the Merger Regulation – control of the whole of the undertaking Sky (Sky UK plc) by way of a public bid.
2. The business activities of the undertakings concerned are: Fox: (i) cable network programming; (ii) television; and (iii) filmed entertainment, – for Sky: (i) licensing/acquisition of audio-visual programming; (ii) TV channel wholesale supply; (iii) retailing of audio-visual programming to subscribers; (iv) provision of technical platform services to broadcasters on Sky's direct-to-home platforms; (v) sale of TV advertising; (vi) provision of fixed-line retail telephony and broadband services; (vii) provision of mobile communications services; and (viii) provision of access to public wi-fi hotspots.
3. The NUJ is the voice for journalism and for journalists across the UK and Ireland. It was founded in 1907 and has 30,000 members. We represent journalists working at home and abroad in all sectors of the media, including staff, students and freelancers – writers, reporters, editors, sub-editors, photographers, illustrators and people who work in public relations.
4. We are an affiliate of both the European Federation of Journalists (EFJ) and the International Federation of Journalists (IFJ); the NUJ is also affiliated to the Trade Union Congress (TUC) and the European Trade Union Confederation (ETUC). All of these organisations have expressed concern about the bid.
5. The NUJ welcomes the decision of the European Commission to examine the proposed merger, which we believe to be contrary to the public interest and a threat to media plurality. As a union we have a strong commitment to the concept of media diversity. Any individual, family or company which dominates the media landscape is fundamentally damaging to democracy. The merger would undermine freedom of expression and, as such, breaches the fundamental principles of the commission.

6. Freedom of expression is one of the cornerstones of the European Union. The exercise of that freedom is contingent on the existence of a free and pluralistic media environment.
7. Article 11 of the Charter of Fundamental Rights of the European Union states: (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
8. Article 11 of the Charter of Fundamental Rights of the European Union also states: (2) The freedom and pluralism of the media shall be respected.
9. Article 11 mirrors the provision of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
10. Article 10 – Freedom of expression states: (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
11. Article 10 – Freedom of expression also states: (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
12. On 26 November 2013, the Council of the European Union and the representatives of the governments of the member states, meeting within the council, adopted conclusions on media freedom and pluralism in the digital environment. In its conclusion the council and the representatives of the governments of the member states noted that “media freedom and pluralism are fundamental values enshrined in the Charter of Fundamental Rights of the European Union. They are an essential pillar of democracy as the media play an important role in ensuring transparency and accountability and have an impact on the public opinion and on the participation of citizens in and the contribution of citizens to the decision-making processes” and agreed that: “a high level of media independence and pluralism is essential not only to democracy, but also contributes to the strengthening of economic growth and to its sustainability”.
13. The 2007 Memorandum of Understanding between the Council of Europe and the European Union lists freedom of expression and information among the shared priorities and focal areas for co-operation between these organisations.

14. In examining the proposed merger, we would encourage the commission to consider the already unsatisfactory situation prevailing in the UK, where the provision of radio and television news is restricted to the BBC and two dominant players in the commercial sector. Sky and News Corporation (trading as News Corp) are the biggest commercial news producers in Britain and their combined influence gives cause for concern. For example, Sky News Radio is the main supplier of news to more than 280 commercial stations across the UK. Sky's only real competitor in radio news production is the BBC. In television, there are now only two UK-based, 24-hour television news channels – Sky News and the BBC News Channel.
15. A new report produced by the Media Reform Coalition in conjunction with Avaaz, entitled "Consolidating Control: The Fox/Sky merger and news plurality in the UK"<sup>i</sup>, argues there is an unprecedented case for intervention in this case and on plurality grounds. The report urges the competition authorities to reject the acquisition to safeguard media plurality. The data contained in the report strongly suggests that, should the deal be allowed to progress, it will result in an unparalleled accumulation of media power in the hands of one family and this is a grave threat to media plurality in Britain and Europe. The report also shows that the ownership landscape in which both Sky and News UK (part of News Corp) operate remains largely unchanged since 2011, when Rupert Murdoch made an initial attempt to buy the remaining shares in Sky plc. The report also argues there appears to have been a marked decline since 2011 in terms of the number of wholesale news sources on which most consumers rely. This assertion suggests that, while the overall picture on plurality is relatively stable on the aggregate level, it is worsening at the level of individual exposure, a condition that further increases the risk posed to diversity and plurality by the proposed deal.
16. A decision was taken in 2011 by the then UK secretary of state to refer the deal to the commission under the public interest test framework, and Ofcom in turn raised substantive concerns about the merger following its review. If the logic of those outcomes is accepted, then it is clear that at least the same level of intervention is warranted now by the UK regulatory authorities and the European Commission.
17. The NUJ has previously welcomed the public interest test on News Corp's proposal to take total control of BSkyB by acquiring the remaining 60.9 per cent of BSkyB shares it did not own. News Corp already owned a third of the existing newspaper circulation and BSkyB, now called Sky UK, is one of only two commercial TV news companies in the UK, supplies Sky News, Channel 5 news and virtually all commercial radio news. The merged company would have had a reach of 52 per cent of the adult population, with profound consequences, not just for media plurality but also for democracy. It was only the unfolding scandal of dubious workplace practices at Murdoch's News of World, along with the public campaign of opposition, that helped put a halt to the first bid.
18. If the current bid is successful, 21st Century Fox, which is controlled by Murdoch's News Corp, will go from owning less than half of Sky to 100 per cent ownership and 21st Century Fox plc would directly control the dominant commercial news producers in the UK across

television, radio and print. If media plurality means anything, it means that news should come from diverse, reliable, and independent sources.

19. The Murdoch family business spans film, television, cable, satellite, newspapers, magazines and book publishing. This cross-ownership and its economy of scale have allowed Murdoch to cross-subsidise and cross-publicise his activities. Thus the dominant role of the Murdoch empire is a matter of European and global concern. In the UK this has allowed Murdoch to embark on savage price-cutting campaigns and bolster loss-making, yet prestigious enterprises, such as The Times.
20. In opposing the merger the NUJ is also mindful of the track record of the principal figures involved in the transaction, Rupert and James Murdoch. The fig leaf of corporate restructuring should not be used as a mechanism to allow the Murdoch family to gain further dominance, control and influence. The propriety of the proposed purchasers and controllers should also be examined and there should be an assessment about whether the proposed owners are persons who are likely to maintain high standards of corporate governance, accountability and conduct. The impact of their conduct on democracy within Europe should also be considered. The role of the Murdoch-owned media in coverage of the Brexit referendum is illustrative.
21. We note that Sky Italia, the Italian digital satellite television platform, is owned by Sky, thus the current proposed merger has particular significance for Italy.
22. The central role of the media in a democracy and the potential consequences of concentration of ownership mean that business transactions involving media organisations must be treated differently to other sales. This is already recognised by the commission, and approval of the proposed merger would run contrary to established policy and principles.
23. The NUJ reaffirms its opposition to the merger and asks that it be viewed as being contrary to the interests of media plurality in the UK and Europe.

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<sup>i</sup> <http://www.mediareform.org.uk/wp-content/uploads/2017/03/plurality-review-FINAL-4.pdf>