Anticipated Acquisition of British Sky Broadcasting Group plc by News Corporation

Response to Ofcom's Invitation to Comment dated 5 November 2010

1. Introduction

1.1 This submission is made by British Sky Broadcasting Group plc[1] ("Sky").

1.2 Sky attaches as Appendix 1 a copy of Sky's statement of 15 June 2010 ("the Sky Statement") regarding News Corporation's proposal relating to a possible offer for the entire issued share capital of Sky not already owned by News Corporation.

1.3 As set out in the Sky Statement, the Board of Sky has passed a resolution to appoint a committee comprising the Independent Directors and the Executive Directors of Sky ("the Independent Committee") with authority to exercise all powers of the Board in relation to any matters relevant to News Corporation's proposal. The Independent Committee has authorised the making by Sky of the present submission.

1.4 As also set out in the Sky Statement, recognising that an offer from News Corporation could be in the interests of Sky shareholders in the future and that obtaining any necessary merger clearances would facilitate such an offer, Sky has agreed to co-operate with News Corporation in seeking those clearances from the relevant authorities. As Ofcom will be aware, News Corporation filed a Form CO with the European Commission on 3 November 2010 in relation to the competition aspects of its proposal.

1.5 The paramount consideration for the Independent Directors and the Executive Directors in relation to News Corporation's proposal is to ensure that the interests of Sky, and Sky's shareholders and employees, are safeguarded. In the context of Ofcom's investigation in relation to media plurality, there are two important aspects to this consideration:

(i) First, as set out in the Sky Statement, the Independent Directors consider that an offer from News Corporation could be in the interests of Sky shareholders in the future, provided that it is at an acceptable price. The prevention of such an acceptable offer would be adverse to those interests.

(ii) Second, Sky wishes to ensure that, in any review by the appropriate authorities of News Corporation's proposal, no precedent is set which would inappropriately or unduly restrict any merger or acquisition opportunities which may be available to Sky (for example, as a result of Sky's continuing operation of Sky News).

1.6 Each of these matters speaks to the need for Ofcom's investigation to be:

- properly focused on the question before Ofcom, and rigorously evidence based, treating with due scepticism submissions by commercial competitors (especially on matters outside the proper scope of Ofcom's investigation)[2]; and

[1] Sky notes that Ofcom's Invitation to Comment incorrectly refers to "British Sky Broadcasting plc".

[2] BT is reported to have called for a public interest intervention in relation to News Corporation's proposal. Sky is unaware of any significant contribution that BT has made to the plurality of news provision in the United Kingdom.

- conducted in a manner which is mindful of the need for transparency and predictability in merger control, so as not unduly to undermine the ability or incentive for companies to expand, invest and innovate.

1.7 In this context, it is important that Ofcom takes proper account of the precedent set by the Competition Commission in its corresponding investigation of media plurality issues arising from Sky's acquisition of a 17.9% shareholding in ITV plc ("the BSkyB/ITV case"), and the judgment of the Court of Appeal which upheld the Competition Commission's decision in that case. As Ofcom will be aware, this was the first and (until the present case) only time in which the media plurality provisions have been applied. While, of course, every case turns on its own facts, Sky submits that the framework of analysis and reasoning adopted by the Competition Commission in the BSkyB/ITV case should be followed by Ofcom in the present case. It is also important that Ofcom takes due account of the DTI's May 2004 Guidance on public interest intervention in media mergers ("the DTI Guidance"), referred to at note 2 of the BIS press release of 4 November 2010.[3]

2. Summary of Response to Invitation to Comment

2.1 Having regard to the introductory points made above, the main points Sky wishes to make in response to Ofcom's Invitation to Comment are as follows:

(i) There are two important boundaries to the scope of Ofcom's investigation. First, Ofcom is required to investigate and report on the impact of News Corporation's proposal ("the Transaction") on media *plurality*, and not on its impact on *competition*, which is a matter which falls to the European Commission. Second, Ofcom's investigation is limited to the impact that the Transaction may have on *existing levels* of plurality.

(ii) The appropriate focus of Ofcom's investigation is on national news, rather than the broader content genres (such as entertainment, fiction or drama) referred to in Ofcom's Invitation to Comment.

(iii) A necessary step in Ofcom's analysis is to determine whether, on the evidence, Sky News (Sky's national news outlet) would cease to be an independent "voice" from News International as a result of the Transaction in circumstances in which (among other considerations) Sky News operates within a strong culture of editorial independence across television news broadcasting.

(iv) Even were Ofcom to consider that Sky News would cease to be such an independent "voice" as a result of the Transaction, Ofcom would then need to consider whether the Transaction would adversely affect the sufficiency of plurality of persons with control of media enterprises to a degree which would result in "serious public interest consequences", "unacceptable levels of dominance" and a "significant reduction in plurality". It is relevant, in this regard, that Sky News' share of national television news viewing remains small at around 7% (and potentially lower if viewing of smaller specialist news channels is taken into account).

(v) Finally, Sky has invested for many years, and continues to invest, in the operation of Sky News as a distinct, impartial and independent news service. The availability of Sky News to audiences, therefore, is the result of a strong commercial incentive, not of any obligation to provide television news. This incentive would remain

[3] The DTI Guidance was published in accordance with section 106A Enterprise Act 2002 with a view to explaining the public interest considerations to persons likely to be affected by them, and indicating how the Secretary of State expected the relevant provisions to operate in relation to such considerations.

irrespective of a change in ownership of Sky. Conversely, it has the potential to be undermined if merger control were to operate such that the operation of Sky News inappropriately or unduly restricted any merger or acquisition opportunities which may be available to Sky. Thus, a conclusion that the Transaction would result in a loss in plurality could perversely increase the risk of that very situation by undermining the incentives which have resulted in the provision of Sky News to date. This would be a wholly unwelcome outcome, contrary to the public interest, and not one that that the Independent Committee wishes to see.

3. The scope of Ofcom's investigation

3.1 The Secretary of State's European Intervention Notice of 4 November 2010 requires Ofcom to investigate and report on the impact of News Corporation's proposed acquisition ("the Transaction") on media plurality by 31 December 2010. As set out at note 4 of the BIS press release of 4 November 2010:

"The notice requires Ofcom to investigate the merger's potential impact on the public interest as it relates to ensuring the sufficiency of plurality of persons with control of media enterprises."

3.2 There are therefore two important boundaries to the scope of Ofcom's investigation, both of which it is important for Ofcom to recognise in the light of the points that Sky has made in paragraphs 1.5 to 1.7 above.

3.3 First, Ofcom is required to investigate and report on the impact of the Transaction on media *plurality*, and not on its impact on *competition*, which is a matter which falls to the European Commission. As set out at note 3 of the BIS press release of 4 November 2010:

"If a reference to the Competition Commission was made, it would consider only the media plurality issues arising from the proposed transaction, not the impact on competition. The EC will consider the competition aspect."

3.4 This point was amplified by Baroness Rawlings, Government Spokesperson for the Department for Culture, Media and Sport, in the House of Lords on 4 November 2010:

"Merger control is concerned with protecting competition. However, European law also recognises that Governments may take appropriate measures to protect certain other public interests that may arise from a merger. Any such exceptional action is tightly constrained in law and must be justifiable and proportionate. It is not a broad power enabling Governments to interfere as they wish and determine what mergers and acquisitions may or may not be allowed to proceed...

All decisions are open to legal challenge and must be founded solely on the impact the specific merger might have on a specified public interest consideration. Extraneous factors may not be taken into account...

Ofcom will provide an initial report by 31 December, examining whether there are substantive reasons to believe the merger may result in outcomes detrimental to the public interest as it relates to ensuring sufficient plurality of media ownership...

The European Commission will examine separately whether the merger raises competition concerns, and take action as appropriate...the plurality review will take place concurrently with the competition review. The two are, however, separate."

This reflects the position under the EU Merger Regulation, which confers on the European Commission exclusive jurisdiction (subject to the terms of the Regulation) to decide whether any concentration having a Community dimension should be prohibited from

proceeding on competition grounds, and leaves it open to Member States to prohibit such transactions only on non-competition grounds. By Article 21 of the EU Merger Regulation, Member States may intervene to prohibit such transactions only to the extent that they may impose appropriate measures to protect legitimate interests other than those taken into consideration under the EU Merger Regulation, being measures compatible with general principles and other provisions of EU law. Thus, any intervention by the UK authorities in the present case on grounds of media plurality must be justified by reference to the need to protect the sufficiency of media plurality, must be reasoned, transparent and proportionate and must be consistent with the competition assessment of the transaction to be undertaken by the European Commission.

3.5 To the extent that Ofcom receives submissions alleging that the Transaction may be expected adversely to impact competition in the provision of news or other content, such submissions would concern "extraneous factors" which should not properly fall within the scope of Ofcom's investigation.

3.6 The second important boundary is that Ofcom's investigation is limited to the impact that the Transaction may have on *existing levels* of plurality. This reflects the framework of analysis adopted by the Competition Commission in the BSkyB/ITV case:

"Whilst recognizing that it would not be sufficient for plurality purposes to rely on a single provider (for example the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a "sufficient" level of plurality of persons. Rather, we have looked qualitatively at sufficiency. ***We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition****."*[4] *(Emphasis added).*

3.7 The Competition Commission concluded in that case that:

"We do not therefore expect BSkyB's ability materially to influence ITV to have an adverse effect on the plurality of news relative to the position absent the acquisition. We therefore concluded that the acquisition would not materially affect the sufficiency of plurality of persons with control of media enterprises servicing audiences for news"[5]

3.8 In the case of the Transaction, therefore, the proper scope of Ofcom's investigation is to investigate the extent of any impact on current levels of plurality that results from News Corporation moving from owning a 39.1% shareholding in Sky to owning a 100% shareholding in Sky.

3.9 In conducting that investigation, and as Sky has submitted in paragraph 1.7 above, Ofcom should also take due account of the DTI Guidance, which makes clear that the purpose of the media plurality public interest provisions is to *"prevent unacceptable levels of media and cross media dominance"*[6] and to act as a safeguard against *"a significant reduction in plurality"*[7]. Furthermore, the Transaction would fall squarely within the scope of paragraph 8.8 of the DTI Guidance, which envisages that the media plurality public interest provisions are (in the case of mergers falling within the scope of that paragraph) intended to operate only *"in exceptional circumstances"* where such mergers give rise to *"serious public interest concerns"*.

3.10 Without these boundaries to Ofcom's investigation, there is a serious risk of the media plurality provisions operating without clear and objective criteria and becoming (contrary

[4] Paragraph 5.15, Competition Commission Report sent to Secretary of State (BERR) 14 December 2007 ("the CC BSkyB/ITV Report").
[5] Paragraph 5.75, *ibid.*
[6] Paragraph 7.7, DTI Guidance.
[7] Paragraph 7.11, *ibid.*

to the statement referred to in paragraph 3.4 above) "a broad power enabling Governments to interfere as they wish and determine what mergers may or may not be allowed to proceed." This would undermine the ability and incentive for companies (including Sky) to expand, invest and innovate.

4. The scope of Ofcom's Invitation to Comment

4.1 Having regard to the above comments on the proper scope of Ofcom's investigation, Sky has the following comments on the potential parameters for that investigation set out by Ofcom in its Invitation to Comment.

Content types

4.2 Ofcom states that it will consider whether content types other than news (such as entertainment, fiction or drama) are relevant for the public interest consideration. Sky submits that they are not.

4.3 Ofcom states at paragraph 1.4 of its Invitation to Comment that:

"In considering the public interest, we do so in light of the relevant statutory framework whereby Parliament has attached significance to the need for sufficient media plurality in the function of a healthy and informed democratic society."

4.4 This statement reflects (albeit incompletely) the often cited statement of Lord McIntosh of Haringey when the relevant plurality provisions were introduced to Parliament:

"Media plurality is important for a healthy and informed democratic society. ***The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda****."*[8] (Emphasis added)

4.5 In principle, it is hard to conceive how even a substantial reduction in the current levels of plurality of persons in control of the providers of entertainment content could result in the resetting of the political agenda. No doubt it was, at least in part, for this reason that, in the BSkyB/ITV case (in which the overlap in the provision of entertainment content as between BSkyB and ITV was significantly more marked than that observable in the case of BSkyB and News Corporation), neither the Competition Commission nor, indeed, Ofcom investigated the impact that transaction might have had on the plurality of provision of any content type other than national news.[9]

Control of Media Enterprises

4.6 Adopting the reasoning of the Competition Commission's decision in the BSkyB/ITV case (as upheld by the Court of Appeal), it is appropriate to consider the matters Ofcom includes in its Invitation to Comment under the heading "Control of media enterprises" before those included by Ofcom under the headings "Audiences" and "Media platforms".

4.7 In the light of those decisions, it is also appropriate to consider (as Ofcom indicates that it will in paragraph 1.9.2 of its Invitation to Comment) the potential impact of the Transaction by reference to what the Competition Commission described as "internal plurality". In the BSkyB/ITV case, the Competition Commission considered as part of its framework of

[8] Cited at paragraph 5.9 of the CC BSkyB/ITV Report, and paragraph 1.7 of Ofcom's 27 April 2007 report to the Secretary of State in relation to the BSkyB/ITV case ("the Ofcom BSkyB/ITV Report").

[9] Paragraphs 3.4 to 3.6 of the Ofcom BSkyB/ITV Report explain Ofcom's rationale for focusing on national news and excluding current affairs content in the BSkyB/ITV case. There is no sound reason for Ofcom to depart from that rationale in the case of the Transaction. See also paragraph 5.32 of the CC BSkyB/ITV Report.

analysis "*the nature and extent to which media owners are able to influence news content which affects the degree of internal plurality within the media outlets that they own*"[10]. The Competition Commission did not consider, on the facts of that case, that the degree of "internal plurality" at ITV would be adversely affected by Sky's acquisition of a 17.9% shareholding in ITV (notwithstanding the Competition Commission's conclusion that such a shareholding was sufficient to afford Sky material influence over ITV), and therefore concluded that the sufficiency of plurality of persons with control of media enterprises servicing audiences for news would not be materially affected.

4.8 Adopting the Competition Commission's reasoning, if, on investigation, no material change to the degree of "internal plurality" at Sky is (on the facts of the present case) to be expected as a result of the Transaction, then there could be no expected reduction in the overall current level of plurality.

4.9 Thus, a necessary step in Ofcom's investigation will be to determine whether, on the evidence, the degree of "internal plurality" at Sky would be adversely affected by News Corporation moving from owning a 39.1% shareholding in Sky to owning a 100% shareholding in Sky, and in particular whether, on the evidence, Sky News would cease to be an independent "voice" from News International as a result of the Transaction in circumstances in which (among other considerations) it operates within a strong culture of editorial independence across television news broadcasting.

4.10 Sky notes in this regard the following findings by the Competition Commission in the BSkyB/ITV case:

"BSkyB and the BBC, which both provide news in-house, emphasized the role of their editorial staff in determining the day-to-day content of their programming. BSkyB told us that all editorial decisions regarding the content of BSkyB's various news services were taken by the Sky News editorial staff. BSkyB board's role was to consider the competitive strategy and funding of BSkyB's news content at a high level; it had no role in the day-to-day editorial control of Sky News content on television or online. We received no evidence from third parties to suggest that senior executives at BSkyB or its parent companies[11] exerted influence on the Sky News agenda."[12]

"Third parties gave us evidence in particular of Mr Rupert Murdoch's influence in recent years in the Labour Government and his editorial influence over News Corporation's newspapers…We did not receive evidence of any direct editorial influence that had been exerted over television news in the UK[13]…"

"In addition, the evidence that we received suggested to us that there was a strong commitment to editorial independence across television news broadcasting which would lead to editors resisting any direct board intervention or intervention from shareholders to set the news agenda…We saw no reason why this should not continue."[14]

4.11 In the light of these findings, it is relevant that, since the merger of BSB and Sky Television in 1990, Sky News has been wholly owned by Sky (that is, Sky has had full legal control over Sky News)[15]. The strong culture of editorial independence identified by the Competition Commission in the BSkyB/ITV case has been evident throughout this period, notwithstanding this legal control. Sky is not aware of any case where the Board of Sky has

[10] Paragraph 5.53, CC BSkyB/ITV Report.
[11] In context, this reference is to be understood as including a reference to News Corporation.
[12] Paragraph 5.57, CC BSkyB/ITV Report.
[13] Paragraph 5.66, *ibid*.
[14] Paragraph 5.68, *ibid*.
[15] Sky also notes that Sky News has already been under the full legal control of News Corporation, in the period prior to the merger of BSB and Sky Television. Indeed, Sky News was launched under the full legal control of News Corporation.

sought to intervene to set Sky News' news agenda. The setting of Sky News' news agenda is not carried out by the Board of Sky; nor is it carried out by Sky's Chief Executive. It is carried out by the Head of Sky News and his editorial team.[16] Moreover, Sky News continues (and would continue following the Transaction) to be subject to strict impartiality requirements under Ofcom's own regulations (a matter which the Competition Commission also considered to be of relevance in the BSkyB/ITV case)[17].

4.12 It is also relevant that Sky has invested for many years, and continues to invest, in the operation of Sky News as a distinct, impartial and independent news service, despite the unattractive returns available from such investments given the presence (among other services) of publicly funded rivals such as BBC News. Indeed, the Board of Sky (including the members of the Board connected to News Corporation) have for many years authorised growing investment in Sky News to that end as part of Sky's overall annual budgeting process. Such investment serves to enhance the overall attractiveness to customers of the services Sky offers. The availability of Sky News to audiences, therefore, is the result of a strong commercial incentive, not of any obligation to provide television news. This commercial investment incentive would remain irrespective of a change in ownership of Sky. Conversely, it has the potential to be undermined if merger control were to operate such that the operation of Sky News inappropriately or unduly restricted any merger or acquisition opportunities which may be available to Sky. Thus, a conclusion that the Transaction would result in a loss in plurality could perversely increase the risk of that very situation by undermining the incentives which have resulted in the provision of Sky News to date. This would be a wholly unwelcome outcome, contrary to the public interest, and not one that that the Independent Committee wishes to see.

Audiences and Media platforms

4.13 If, notwithstanding the above, Ofcom were to consider that the degree of "internal plurality" at Sky would be adversely affected by the Transaction, then Ofcom would then need to consider whether the Transaction would adversely affect the sufficiency of plurality of persons with control of media enterprises to a degree which would result in "serious public interest consequences", "unacceptable levels of dominance" and a "significant reduction in plurality".[18]

4.14 This is not a question which the Competition Commission needed to address in the BSkyB/ITV case, given its findings in relation to "internal plurality". However, the Competition Commission nevertheless found that:

"Figure 4 shows the shares of national television viewing of the main channel providers (measured in terms of the number of hours watched by all viewers)...Channel 4, Five and Sky News each have viewing shares of less than 5 per cent..."[19]

"Our view is that, whilst viewing shares and readership vary somewhat by socio-economic group, there are no fundamental differences in the significance of ITV, BSkyB and News International to particular sections of the UK population..."[20]

"We also investigated whether there were particular individuals within the UK population, who currently took news from ITV and BSkyB and/or News International, but from no other source.

[16] Sky refers in this context to the submission to the Competition Commission of Mr Nick Pollard, former Head of Sky News, dated 27 February 2007 and available on the Competition Commission's website at: http://www.competition-commission.gov.uk/inquiries/ref2007/itv/third_party_submissions.htm

[17] Paragraph 5.54, CC BSkyB/ITV Report.

[18] See paragraph 3.9 above.

[19] Paragraph 4.172, CC BSkyB/ITV Report.

[20] Paragraph 5.50, *ibid.*

We found that no more than 1 per cent of the population, and quite possibly less than this, fell into this category."[21]

4.15 In the light of these findings, it is relevant that Sky News' share of national television news viewing remains small at around 7% (potentially lower if viewing of smaller specialist news channels is taken into account) and alternative sources of news, in particular via the internet, have risen considerably in prominence since the CC BSkyB/ITV Report. Further, with regard to the Competition Commission's third finding referred to in paragraph 4.14 above, even were Sky News to cease to be an independent "voice" from News International following the Transaction, the percentage of the UK population who could be said to have relied upon Sky News as such an independent "voice" (and who therefore would in practice suffer from a loss of plurality) would be extremely low.

4.16 Sky notes further that, in its analysis in the BSkyB/ITV case, the Competition Commission did not seek to aggregate either Five News or radio services receiving news content from Sky into Sky News' audience share. It remains the case that neither Sky's arrangements with Five News nor its arrangements with IRN afford Sky control of the setting of the news agenda of Five News or any of the radio services supplied by IRN.

Future developments

4.17 Sky agrees that a consideration of future developments is relevant to considering the potential impact of the Transaction on existing levels of plurality, not least given the growing prominence of news provision via the internet. However, it would not be appropriate for such an analysis to set a new benchmark for "sufficient" plurality based on Ofcom's views of how news provision might develop following, or in the absence of, the Transaction. The correct counterfactual for Ofcom's analysis is the existing level of plurality.

Sky **19 November 2010**

[21] Paragraph 5.51, *ibid.*

APPENDIX 1

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION (IN WHOLE OR IN PART) IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION

For Immediate Release

British Sky Broadcasting Group plc ("BSkyB" or the "Company")
Statement Regarding Proposal from News Corporation

15 June 2010

The Independent Directors of BSkyB refer to the announcement by News Corporation of a proposal from News Corporation relating to a possible offer for the entire issued share capital of BSkyB not already owned by News Corporation ("the Proposal").

The Proposal, which is not a formal offer, is subject to regulatory and financing pre-conditions, which add considerable uncertainty to when and whether any formal offer could be made.

The Independent Directors, who have been so advised by Morgan Stanley and UBS Investment Bank, unanimously consider the terms of the Proposal to undervalue significantly BSkyB and they would not recommend an offer if it were made at 700 pence per share today, the price indicated in the Proposal. In providing advice to the Independent Directors, Morgan Stanley and UBS Investment Bank have taken into account the commercial assessments of the Independent Directors.

The Independent Directors, who have been so advised by Morgan Stanley and UBS Investment Bank, have indicated to News Corporation that, based on facts and circumstances today, they would have been prepared to support a proposal if, upon satisfaction of the regulatory pre-conditions, it would deliver value in excess of 800 pence per share. Given the views of the Independent Directors as to, among other things, the possible length of time which might be required to satisfy the regulatory pre-conditions and the consequent lack of certainty as to when any offer would be made, the Independent Directors reserve: (i) the right to recommend an offer at a price of 800 pence per share or lower, including in the event that the regulatory pre-conditions are satisfied or waived in a shorter period of time; and (ii) the right to choose not to recommend an offer at above 800 pence per share. In providing advice to the Independent Directors, Morgan Stanley and UBS Investment Bank have taken into account the commercial assessments of the Independent Directors. In reaching this decision the Independent Directors considered the matter mindful of their duty to maximise value for all shareholders.

The Independent Directors note that News Corporation has confirmed that the Proposal does not amount to a firm intention to make an offer under Rule 2.5 of the Takeover Code and that there can be no certainty that any offer will ultimately be made even if the pre-conditions are satisfied or waived. There is no obligation on News Corporation to make such an offer and therefore it can withdraw the Proposal at its sole discretion at any time.

Recognising that an offer from News Corporation could be in the interests of BSkyB shareholders in the future, and that obtaining any necessary merger clearances would facilitate such an offer, BSkyB has agreed to co-operate with News Corporation in seeking those clearances from the relevant authorities.

To that end, BSkyB and News Corporation have entered into an agreement which also covers the following matters:

- BSkyB has agreed that it shall not request that the Takeover Panel issue a "Put up or shut up" notice on News Corporation pursuant to Rule 2.4(b) of the City Code on Takeovers and Mergers unless it is in material breach of the agreement.

- News Corporation has agreed that until two months following the earlier of receipt of merger clearance, payment of the £38.5 million fee below and 31 December 2011, it shall not acquire or offer to acquire an interest in BSkyB's shares or take action that would require it to make a takeover or similar transaction in respect of BSkyB's shares without the consent of the Independent Directors. Further, until five months following the earlier of receipt of merger clearance, payment of the £38.5 million fee below and 31 December 2011, any offer must be subject to a minimum acceptance threshold of 70 percent (including the shares owned by News Corporation).

- If merger clearance is not granted or granted subject to a material remedy, then News Corporation will reimburse BSkyB for costs incurred up to a maximum of £20 million. Further, if News Corporation either receives merger clearance unconditionally or subject to non-material remedies prior to 31 December 2011 and fails to make a firm offer within five months thereafter, or announces prior to obtaining merger clearance that it does not intend to make a firm offer, then News Corporation will pay BSkyB a fee of £38.5 million, representing 0.5% of the value of the Proposal.

The Board has passed a resolution to appoint a committee comprising the Independent Directors and the Executive Directors with authority to exercise all powers of the Board in relation to the possible offer and any matters relevant to the Proposal.

These Directors, who constitute a majority of the Board of BSkyB, intend to exercise their rights and powers to manage the governance of the Board during this period in the best interests of all shareholders. This will include taking such steps within their power as they consider appropriate to regulate the attendance of Directors connected with News Corporation at meetings of the Board (or any committee of the Board) and receipt of information relating to the Company by those Directors that are deemed relevant to the Proposal. These arrangements will continue for the duration of the Proposal or until the successful completion of any transaction contemplated by the Proposal.

In recognition of the above it has been agreed by the Board that Nicholas Ferguson, the Senior Independent Non-Executive Director, will be appointed as Deputy Chairman of the Board.

Commenting on the Proposal, Nicholas Ferguson, BSkyB's Senior Independent Non-Executive Director, said:

"The eight Independent Directors have evaluated the proposal since receiving News Corporation's approach on 10 June. Based on careful review and advice, it is the unanimous view of the Independent Directors that there is a significant gap between the proposal from News Corporation and the value of the company. We believe the company has a track record of very strong performance and excellent growth prospects. The management team will remain fully focused on its strategic and operational priorities, positioning the Company well to grow earnings and cash and increase returns for shareholders. The Independent Directors remain fully committed to acting in the interests of all shareholders and will continue to meet on a regular basis."

Morgan Stanley & Co. Limited ("Morgan Stanley") and UBS Investment Bank are acting as joint financial advisers to BSkyB. Merrill Lynch and an affiliate of Morgan Stanley, Morgan Stanley & Co.

International plc, are acting as joint corporate brokers and Merrill Lynch is also providing certain financial advice to BSkyB.

-END-

Note to editors:

The Independent Directors of BSkyB are:

Nicholas Ferguson, Senior Independent Non-Executive Director
Nicholas Ferguson was appointed as a Director of the Company on 15 June 2004 and Senior Independent Non-Executive Director on 12 June 2007. Nicholas is Chairman of SVG Capital plc, a publicly quoted private equity group, and was formerly Chairman of Schroder Ventures.

David Evans
David Evans was appointed as a Director of the Company on 21 September 2001. David was previously President and CEO of Crown Media Holdings, Inc. and its predecessor company, Hallmark Entertainment Networks, from 1 March 1999. Prior to that, David was President and CEO of Tele-Communications International, Inc. from January 1998. David is a Director of Village Roadshow Ltd in Australia and a Director of Village Roadshow Entertainment Group and Concord Music in Los Angeles.

Andrew Higginson
Andrew Higginson was appointed as a Director of the Company on 1 September 2004. Andrew is Chief Executive of Retailing Services and Group Strategy Director of Tesco plc (Tesco). Andrew was appointed to the Board of Tesco in 1997, having previously been the Group Finance Director of the Burton Group plc.

Allan Leighton
Allan Leighton was appointed as a Director of the Company on 15 October 1999. Allan joined ASDA Stores Limited as Group Marketing Director in March 1992 and was appointed CEO in September 1996. In November 1999 he was appointed President and CEO of Wal-Mart Europe. Allan resigned from all of these positions in September 2000. Allan is currently Deputy Chairman of Selfridges & Co Ltd., George Weston Limited and Loblaws Companies Limited. Allan was Chairman of Bhs Limited until January 2008 and Chairman of The Royal Mail Group until March 2009.

Jacques Nasser
Jacques Nasser was appointed as a Director of the Company on 8 November 2002. Jacques served as a Member of the Board of Directors, and as President and CEO of Ford Motor Company from 1998 to 2001. Jacques is the Chairman of BHP Billiton and a Partner of One Equity Partners, the private equity arm of JP Morgan.

Dame Gail Rebuck
Dame Gail Rebuck was appointed as a Director of the Company on 8 November 2002. Gail is Chairman and CEO of The Random House Group Limited, one of the UK's leading trade publishing companies.

Daniel Rimer
Daniel Rimer was appointed as a Director of the Company on 7 April 2008. Daniel is a General Partner of the venture capital firm Index Ventures Management Limited (Index Ventures) and established the firm's London office. He currently serves on a number of boards including RightScale Inc., Oanda Corporation, FON Wireless Limited, Stardoll Inc. and Viagogo Limited.

Lord Wilson of Dinton
Richard Wilson was appointed as a Director of the Company on 13 February 2003. Richard retired from the Civil Service in 2002 after serving 36 years in a number of UK Government departments.

Since his retirement in September 2002, Richard has been Master of Emmanuel College, Cambridge. In October 2006, he became Non-Executive Chairman of C. Hoare and Co, Bankers.

Enquiries:

British Sky Broadcasting Group plc
Investors:
Francesca Pierce Tel: 020 7705 3337

Media:
Robert Fraser Tel: 020 7705 3706

Finsbury
Roland Rudd Tel: 020 7251 3801
Katie Lang Tel: 020 7251 3801

Morgan Stanley & Co. Limited (Financial Advisor):
Simon Robey / Scott Matlock / Laurence Hopkins Tel: 020 7425 8000

Morgan Stanley & Co. International plc (Joint Corporate Broker):
Paul Baker Tel: 020 7425 8000

UBS Investment Bank (Financial Advisor)
Simon Warshaw / Jonathan Rowley / Christian Lesueur Tel: 020 7568 1000

Bank of America Merrill Lynch (Joint Corporate Broker)
Mark Astaire Tel: 020 7628 1000
Andrew Tusa Tel: 020 7628 1000

Morgan Stanley & Co. Limited and Morgan Stanley & Co. International plc are acting as financial adviser and joint corporate broker, respectively, to BSkyB in relation to the Proposal and no-one else and will not be responsible to anyone other than BSkyB for providing the protections offered to clients of Morgan Stanley & Co. Limited and Morgan Stanley & Co. International plc or for providing advice in relation to the Proposal or the contents of this announcement or any transaction, arrangement or other matter referred to herein.

UBS Investment Bank is acting as financial adviser to BSkyB in relation to the Proposal and no-one else and will not be responsible to anyone other than BSkyB for providing the protections offered to clients of UBS Investment Bank or for providing advice in relation to the Proposal or the contents of this announcement or any transaction, arrangement or other matter referred to herein.

Bank of America Merrill Lynch is acting as joint corporate broker to BSkyB and no-one else and will not be responsible to anyone other than BSkyB for providing the protections offered to clients of Bank of America Merrill Lynch or for providing advice in relation to the Proposal or the contents of this announcement or any transaction, arrangement or other matter referred to herein.

None of Morgan Stanley & Co. Limited, Morgan Stanley & Co. International plc, UBS Investment Bank and Bank of America Merrill Lynch accepts any responsibility or liability for the contents of this announcement to anyone other than BSkyB. Each of Morgan Stanley & Co. Limited, Morgan Stanley & Co. International plc, UBS Investment Bank and Bank of America Merrill Lynch accordingly disclaims all and any responsibility or liability whether arising in tort, contract or otherwise (save as referred to above) which it might otherwise have in respect of this announcement.

Dealing disclosure requirements

Under Rule 8.3(a) of the Code, any person who is interested in 1% or more of any class of relevant securities of BSkyB or of any paper offeror (being any offeror other than an offeror in respect of which it has been announced that its offer is, or is likely to be, solely in cash) must make an Opening Position Disclosure following the commencement of the offer period and, if later, following the announcement in which any paper offeror is first identified.

An Opening Position Disclosure must contain details of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) BSkyB and (ii) any paper offeror(s). An Opening Position Disclosure by a person to whom Rule 8.3(a) applies must be made by no later than 3.30 pm (London time) on the 10th business day following the commencement of the offer period and, if appropriate, by no later than 3.30 pm (London time) on the 10th business day following the announcement in which any paper offeror is first identified. Relevant persons who deal in the relevant securities of BSkyB or of a paper offeror prior to the deadline for making an Opening Position Disclosure must instead make a Dealing Disclosure.

Under Rule 8.3(b) of the Code, any person who is, or becomes, interested in 1% or more of any class of relevant securities of BSkyB or of any paper offeror must make a Dealing Disclosure if the person deals in any relevant securities of BSkyB or of any paper offeror. A Dealing Disclosure must contain details of the dealing concerned and of the person's interests and short positions in, and rights to subscribe for, any relevant securities of each of (i) BSkyB and (ii) any paper offeror, save to the extent that these details have previously been disclosed under Rule 8. A Dealing Disclosure by a person to whom Rule 8.3(b) applies must be made by no later than 3.30 pm (London time) on the business day following the date of the relevant dealing.

If two or more persons act together pursuant to an agreement or understanding, whether formal or informal, to acquire or control an interest in relevant securities of BSkyB or a paper offeror, they will be deemed to be a single person for the purpose of Rule 8.3.

Opening Position Disclosures must also be made by BSkyB and by any offeror and Dealing Disclosures must also be made by BSkyB, by any offeror and by any persons acting in concert with any of them (see Rules 8.1, 8.2 and 8.4).

Details of the offeree and offeror companies in respect of whose relevant securities Opening Position Disclosures and Dealing Disclosures must be made can be found in the Disclosure Table on the Takeover Panel's website at www.thetakeoverpanel.org.uk, including details of the number of relevant securities in issue, when the offer period commenced and when any offeror was first identified. If you are in any doubt as to whether you are required to make an Opening Position Disclosure or a Dealing Disclosure, you should contact the Panel's Market Surveillance Unit on +44 (0)20 7638 0129.

Publication of this announcement

A copy of this announcement will be available subject to certain restrictions relating to persons resident in restricted jurisdictions on BSkyB's website.

Relevant securities in issue

In accordance with Rule 2.10 of the Code, BSkyB confirms that it has the following class of relevant securities in issue:

Number of securities	Type of securities	ISIN Number
1,752,842,599	Ordinary Shares	GB0001411924