

21st Century Fox and News Corporation: the Murdochs' common control

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AVAAZ

About AVAAZ

Avaaz has a simple democratic mission: organize citizens of all nations to close the gap between the world we have and the world most people everywhere want. Avaaz enables millions of people from all walks of life to take action on pressing global, regional and national issues, from corruption and poverty to conflict and climate change.

The Avaaz community campaigns in 16 languages, served by a core team on 6 continents and thousands of volunteers. We have 45 million members worldwide and 1.5 million in the United Kingdom.

Avaaz members across the UK are concerned about Rupert Murdoch's threat to our public debate and democracy, and played a major role in slowing and halting the Murdochs' bid for BSkyB in 2010-11. And the Avaaz movement has been vocal and effective in calling for a full scrutiny of the bid for Sky in 2016-2017, including by submitting evidence, bringing witnesses from the USA, and encouraging inputs to consultations.

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About this briefing

This briefing is intended to inform the Competition and Markets Authority in its scrutiny of the proposed takeover of Sky plc by 21st Century Fox.

It should be read in the context of other submissions made to the CMA at the same time:

- 1) Fox News: broadcasting non-compliance
- 2) Defiance, not compliance: the culture and behaviour of Murdoch-owned companies.

And in the context of Avaaz's previous submissions and representations on the Fox/Sky takeover:

Submissions to the Secretary of State

- The Fox/Sky Takeover: Why A Phase Two Referral On Broadcasting Standards Is Needed To Protect The Public Interest, 14 July 2017
- Consolidating Control The Fox/Sky Merger And News Plurality In The UK, February 2017

Submissions to Ofcom

- Before The Murdoch Takeover: New Evidence Indicating The Need For A Further "Fit And Proper" Review, 8 March 2017
- Murdoch's Fox Effect: How full ownership of Sky risks undermining British broadcasting standards, 30 March 2017
- Report entitled "Rupert Murdoch and Donald Trump - The Conflicted Alliance", 8 May 2017;
- Report entitled "Racist content in the Murdoch Media" 11 May 2017;
- 21st Century Fox and News Corporation: the Murdochs' common control, 30 March 2017, amended on 13 April 2017
- Sexual harassment, denials and cover ups: evidence of a rotten corporate culture at Fox, 30 March 2017.

Executive summary

In this briefing, we argue that 21st Century Fox's ("21C Fox") bid for Sky plc ("Sky") raises serious plurality and broadcasting standards concerns which justify a recommendation by the CMA to the Secretary of State that it should be rejected.

The Murdoch Family Trust's shareholdings in 21C Fox and News Corporation ("News Corp") gives Rupert Murdoch common control of both companies. 21C Fox's recent submission to the CMA, that OFCOM misunderstood the legislative framework for assessing control and plurality, is misleading and wrong.

A failure to recognise this and a failure to recommend rejection of the bid risks compromising media plurality in the U.K. and would give Rupert Murdoch increased influence over British public life despite compelling evidence of his utter disregard for broadcasting standards and basic journalistic norms.

21C Fox's previous submissions on control emphasise the splitting in two of News Corporation

When writing to the Secretary of State in December 2016 and March 2017, 21C Fox placed great emphasis on the splitting of News Corporation in 2012 into two separate companies, News Corporation and 21C Fox, each with supposedly majority-independent shareholders and majority-independent boards.

It argued that the relevance of this split could not be dismissed merely because of any degree of cross-ownership between the two companies, by which it meant the Murdoch Family Trust's holdings of voting shares in each company. 21C Fox stressed that to take that approach would be contrary to the appropriate legal test, relying on the Court of Appeal's own emphasis in the Sky/ITV case on the need to take account of the "*actual extent of control*".¹

This issue is critical to the consideration of the questions of 'sufficiency of plurality' and 'genuine commitment' to broadcasting standards which section 58 of the Enterprise Act 2002 places at the heart of the public interest review of media mergers.

OFCOM's conclusion in June that "*internal plurality cannot allay our concerns about external plurality in the wider news market*" is particularly relevant here.² In a recent briefing to the CMA by its lawyers, Allen & Overy, 21C Fox undermines that conclusion by returning to its earlier argument, described above. It develops it into an attack on OFCOM's whole approach, in

¹ 21C Fox's letter to the Secretary of State, dated 8 March, 2017 and *British Sky Broadcasting Group plc v Competition Commission & Anor.* [2010] EWCA Civ 2

² Page 13 of OFCOM's public interest report. See also, para 80 of the Sky/ITV judgment defines internal and external plurality - "If the control was less than complete, and if in practice it would not enable the controlling enterprise to dominate the policy and the output of the controlled enterprise, that was something that should be taken into account. [The CC] referred to this situation as "internal plurality", as compared with the effect of counting the number of controlling enterprises, and ignoring the limits on the control exercised by any of them, which it referred to as external plurality.."

particular of treating 21C Fox, Sky and News Corporation as a single entity, and accuses OFCOM of misunderstanding the Court of Appeal's interpretation of the legislative framework.³

We note too that the CMA, in its recent issues statement, says that it will not start by assuming the existence of such a single entity, albeit by reference to a slightly different list (the Murdoch Family Trust, Fox and News Corp).

Quantitative and qualitative distinctions lead 21C Fox into 'deep water'

The Court of Appeal judgment in Sky/ITV undoubtedly emphasises the need to take account of the actual extent of control, but 21C Fox's and Allen & Overy's emphasis on this overlooks important distinctions the court made concerning how the merger regime comes into play and how plurality should be treated in a situation where, as is the case here, there is already an existing level of control between two enterprises which is going to increase as a result of the merger. The Court acknowledged how difficult these distinctions can be, including arguments put to it concerning the "*deep water [that] the interaction between quantitative and qualitative assessment*" can lead the unwary into.⁴

Where 21C Fox argues that OFCOM built its analysis on an irrelevant 'legal fiction'⁵ (by treating 21C Fox, Sky and News Corp as a single entity and finding that the number of persons in control of media enterprises is reduced⁶), we argue that this part of OFCOM's analysis is the quantitative analysis that is explicitly acknowledged by the Court of Appeal to be required under the Enterprise Act in the circumstances of this Transaction.

Where 21C Fox argues that OFCOM does not consider the actual extent of control, we argue that this is precisely what OFCOM does look at for the purpose of the separate qualitative analysis which it acknowledges is required for assessing 'internal plurality'.

In seeking to undermine OFCOM's whole approach by blurring the distinctions between these necessary quantitative and qualitative analyses, it is Allen & Overy and 21C Fox who misinterpret the legislative framework. The CMA's clarification that it will not assume the existence of a single entity is surely correct for the purposes of assessing internal plurality, but we would respectfully point out that the requirement to construe plurality considerations in the manner prescribed by sub-section 58A(4) of the Enterprise Act is explicitly reaffirmed by the Court of Appeal. It is this provision on which OFCOM relies to find a reduction in the number of persons in control.

³ See Allen & Overy's "Initial submission to the CMA regarding media plurality" dated 27 September, 2017. See also footnote 2 above for the definition of internal and external plurality.

⁴ See paragraph 112 of the Sky/ITV judgment.

⁵ See para 1.6(i) of Allen & Overy's submission to the CMA, dated 27, September 2017.

⁶ See paras 2.5 and 3.27 of OFCOM's public interest report.

Empirical evidence reveals the extent of Rupert Murdoch's control over media companies

We also provide empirical evidence of the considerable actual control, and resulting political bias, which Rupert Murdoch, through the Murdoch Family Trust, exercises over the nominally independent companies in which he is invested.

This evidence strongly supports OFCOM's conclusion that, in this Transaction, internal plurality cannot allay concerns about external plurality as well as emphasising the artificiality of the corporate split introduced by the Murdochs in 2012, a change believed by many to be designed in part to facilitate a second bid to take over Sky.⁷

We also clarify the concerns we raised in our previous briefing to OFCOM on common control about the independence of News Corporation under NASDAQ rules in the light of new developments.

⁷ See, for example, "Scandal fallout drives News Corp. restructuring" - <http://variety.com/2012/tv/news/scandal-fallout-drives-news-corp-restructuring-1118055975/>

SECTION 1. *The Sky/ITV judgment - Fox and Allen & Overy distort OFCOM's position*

1.1 *Sections 58 and 58A - how to interpret 'sufficient plurality' and 'genuine commitment' to broadcasting standards*

The key part of the Court of Appeal's judgment for present purposes is the discussion of sections 58 and 58A of the Enterprise Act. The Secretary of State has the power to refer mergers to OFCOM and the CMA concerning 'specified considerations' in public interest cases.⁸ Section 58 sets out these specified considerations, including 'sufficiency of plurality' and 'genuine commitment' to broadcasting standards, which apply to media mergers pursuant to sub-section 58(2C).

Section 58A is a 'construction' provision whose sole purpose is to clarify the meaning of key concepts used in relation to the specified considerations set out in the previous section 58. The judgment focuses in detail on two separate 'deeming' provisions - sub-sections 58A(4) and 58A(5) - which give specific instructions on how certain situations should be construed.

The exact interpretation of sub-sections 58A(4) and 58A(5) has important consequences for any assessment of plurality which we describe below. Before proceeding to those, the Court explained an important piece of context - that there are three different levels of control which may have the effect of causing two enterprises to cease to be distinct under section 26: "*ownership, ability to control policy, and ability materially to influence policy.*"⁹ The deeming provisions of sub-section 58A(4) and 58A(5) are intended to avoid distortions which may otherwise arise as a result of the interaction of these different levels of control in a merger.

1.2 *21C Fox's 'legal fiction' argument rests on a statutory provision on which OFCOM does not rely*

The judgment concentrates on the effect of sub-section 58A(5). The court acknowledges that this addresses the issue of 'internal plurality' between two or more enterprises under any degree of control by the same person. The Court considered whether its meaning is to deem that all relevant enterprises in such a situation will simply be treated as under the 'control' of one person without any regard being paid to the level of actual control that person may exercise.

The Court recognised that, here, the wording of the sub-section presents a stark and perverse choice between legal fiction and reality. It therefore effectively neutered the sub-section by preferring an interpretation which focuses on the '*actual extent of control*' to the exclusion of any artificiality.

⁸ Section 42 of the Enterprise Act 2002

⁹ See paragraphs 11, 12 and 81 of the judgment [citation]

Crucially, OFCOM's approach in treating 21C Fox, Sky and News Corp as a 'single entity'¹⁰ and its 'starting point', that "*the transaction would reduce the number of persons having control of media enterprises by bringing Sky under the full control of Fox*",¹¹ is based on sub-section 58A(4) instead of 58A(5).

Section 58A(4) states that: "Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards."

We set out below how the Court interpreted these words and we show how OFCOM followed its instructions to the letter. A proper reading of the judgment reveals that, not only is it misleading to accuse OFCOM of reliance upon any 'legal fiction', the Court's reasoning also has adverse consequences for one of 21C Fox's key arguments - that the current Transaction brings about no real change.

1.3 Paragraph 93 of the Court of Appeal's judgment and section 58A(4) - OFCOM's approach correctly addresses an 'oddity' recognised by the Court

Paragraph 93 of the Court's judgment sets out its approach to sub-section 58A(4). It discusses what it calls an "*oddity*" arising from the existence of the three different possible relevant levels of control already referred to above. This oddity "*may mean that an enterprise, A, which already has the lowest level of control over another enterprise, B, so that they have ceased to be distinct, may gain an increased level of control.*" {emphasis added}

This is the situation in the present Transaction. 21C Fox accepts that the Murdoch Family Trust already has the lowest level of control over Sky provided for in the Act - 'material influence' - and goes on to argue that, as a result, the Transaction will make no difference.¹² This argument, that the change in control will make no difference, is precisely what sub-section.58A(4) is designed to rebut. The Court clearly affirms this.

Paragraph 93 makes clear that, where the oddity of an increase from a low to a higher level of control arises, "*B is again treated as being brought under the control of A and they cease to be distinct for a second time under section 26(1)*". Otherwise, the merger control regime set out in Part 3 of the Enterprise Act would not apply.

The Court then says that the very point of sub-section 58A(4) is that it "*precludes an argument that, because B is already under the control of A at the start, the added level of control makes no difference, and the number of enterprises serving the relevant audience is the same before and after the [relevant merger situation].*" {emphasis added}

¹⁰ Ofcom's public interest report - paragraph 2.5

¹¹ Ofcom's public interest report - paragraphs 2.5 and 3.27, footnote 58

¹² See para 1.6(i) and (ii) of Allen & Overy's submission to the CMA of 27 September, 2017

When OFCOM looks at existing levels of control to identify a ‘single entity’ and then applies sub-section 58A(4) in order to deem that the increase in 21C Fox’s control of Sky is the second time they cease to be distinct under section 26, it correctly follows the interpretation of sub-section 58A(4) by the Court.

OFCOM then proceeds to the qualitative analysis of the ‘actual extent of control’ for ‘internal plurality’ purposes which is also required by the Court of Appeal. In order to do that, OFCOM relies on the substantial evidence submitted to it showing interference with editorial choice by enterprises controlled by the Murdoch Family Trust and concludes that the increase in control over Sky gives rise to risks which mean that “*internal plurality cannot allay our concerns about external plurality in the wider news market*”.¹³

Those conclusions are the result of the quantitative and qualitative analysis which OFCOM was obliged by the legislative framework to carry out. To argue, as Allen & Overy suggest, that the change from a low level of control to a higher one has no effect is the irrelevant ‘legal fiction’ here and is, as the Court makes clear, precluded by statute.

1.4 The change will remove obstacles in the way of Rupert Murdoch’s ambition to make Sky News more like Fox News

That change pulls Sky closer into the orbit of 21C Fox and News Corp by removing a bulwark of independent shareholders who have, up to now, restrained the full force of the Murdoch Family Trust’s influence over the company. By contrast to 21C Fox and News Corp, the Murdochs do not enjoy an executive position within Sky at present, and independent shareholders have shown a willingness to act as a constraint on the Murdochs’ power. James Murdoch’s removal as Chair of Sky in 2012 happened after pressure from independent shareholders following the phone-hacking scandal.¹⁴ His reappointment as Chair of Sky in 2016 has been actively opposed too; just this month 48.4% of independent shareholders refused to support him in for this role. Rupert Murdoch himself has previously complained to a Parliamentary Committee in 2007 that the only reason Sky News had not already become more like Fox News is that ‘*nobody at Sky listens to me*’.¹⁵ The change contemplated by this Transaction will, however, leave the Murdoch Family Trust, via its control of 21C Fox, free to dominate and control the Sky board and allow him to fulfil that frustrated ambition.

¹³ Page 13 of OFCOM’s public interest report

¹⁴ See - <https://www.theguardian.com/media/2012/apr/03/james-murdoch-step-down-bskyb-chairman>

¹⁵ See evidence to the House of Lords communications committee as reported in <https://www.theguardian.com/media/2007/nov/24/bskyb.television>

Section 2. Rupert Murdoch's dominance of weak and ineffective 'independent' boards

OFCOM's conclusion that internal plurality cannot allay its concerns over external plurality here is amply justified by the evidence submitted to it of the actual extent and highly damaging effect of the control exercised by Rupert Murdoch, through the Murdoch Family Trust, over 21C Fox and News Corp.

Our own earlier briefing on common control for OFCOM highlights three class action claims in the US courts which are based on allegations that Rupert Murdoch had complete control of the News Corp (now 21C Fox) board, and that this caused serious harm to shareholders, employees and the public as a result of, for example, the acquisition of Elisabeth Murdoch's production company, Shine, at a gross overvaluation of \$674m or the phone hacking scandal in the UK.¹⁶

We reiterate here, in particular, how one of those claims, by Amalgamated Bank, was settled by 21C Fox in 2013 for \$139m - one of the largest settlements of corp litigation in Delaware history. Our earlier briefing to OFCOM on common control provided a summary of the relevant allegations of lack of independence made against each relevant director. Our other briefings to OFCOM also highlight how the Murdoch Family Trust's influence encouraged a shocking culture of sexual and racist abuse at Fox News.

To give just the most recent example of accusations of how Rupert Murdoch's dominates wholly ineffective boards, a story in *The New York Times*, dated 6 October, 2017, shows how complaints of this kind by investors persist and remain unresolved within the Murdoch empire.¹⁷ CtW Investment Group, which advises several union pension funds invested in 21C Fox, called for the company to overhaul its board and conduct a comprehensive review of its workplace culture in the wake of sexual and racial harassment scandals at its Fox News division. CtW sent a letter to Viet D. Dinh, the chairman of the board's nominating and corporate governance committee, accusing directors of failing to effectively address a "*longtime ethics crisis*" at Fox News, and risking the company's reputation, operations and long-term value.

Since our earlier briefings, we have also reviewed empirical academic research into the impact of the Murdoch Family Trust's ownership or control on the editorial output of media enterprises. We summarise these below. They demonstrate that OFCOM's concerns about the real increase in the actual level of control by Rupert Murdoch and the Murdoch Family Trust which this Transaction would create are supported by in-depth and detailed data-driven analysis.

¹⁶ See '21st Century Fox and News Corporation: the Murdochs' Common Control' by Avaaz, dated 30 March, 2017 (as amended 13 April).

¹⁷ See NYT -

<https://www.nytimes.com/2017/10/12/business/media/21st-century-fox-sexual-harassment.html?rref=collection%2Fsectioncollection%2Fbusiness&action=click&contentCollection=business®ion=rank&module=package&version=highlights&contentPlacement=9&pgtype=sectionfront&r=0>

2.1 Professor David McKnight of University of New South Wales - Rupert Murdoch is deeply committed to an ideological stance and News Corp is unique among media conglomerates

In 2010, David McKnight analysed the history of News Corporation and argued that it is “*unique among media conglomerates in its commitment to Rupert Murdoch's ideological beliefs, providing evidence that Murdoch is willing to let some of his newspapers lose great sums of money in the service of the promotion of his beliefs*”.¹⁸

McKnight examined a broad range of evidence and data, including, for example News Corporation's approach to the war in Iraq. He noted:

- how News Corp's global news media uniformly supported the Iraq invasion and its subsequent occupation
- that a former Sunday Times editor, Andrew Neil, told a House of Lords inquiry in 2008 that “*there were more discordant voices [on the Iraq invasion] in the Bush administration than there were in the Murdoch empire, and that is just the way he runs things.*”
- a survey of News Corporation newspapers before the war by Professor Roy Greenslade which concluded that Murdoch had an “*unerring ability to choose editors across the world who think just like him*” and: “*How else can we explain the extraordinary unity of thought in his newspaper empire about the need to make war on Iraq?*”

McKnight concludes by saying that his evidence shows that “*for all his business acumen and desire to succeed, Rupert Murdoch is deeply committed to an ideological stance, which he is prepared to further through media outlets in some cases at the cost of significant losses.*”

2.2 Wagner and Collins - the Wall Street Journal post-Murdoch displays a broad, ideological shift to the right and editorial changes which are unique to News Corp compared with other comparable publications

In 2014, Wagner and Collins compared the *Wall Street Journal's* editorial page before and after Rupert Murdoch's News Corporation purchased the paper with two newspapers that did not change ownership structures over the same time period (*The New York Times* and *Washington Times*).¹⁹

In approaching their analysis, Wagner and Collins acknowledged that before questions of changes in Murdoch's control over the conservative movement and partisan political debate in the United States could be answered, it was essential to know whether the editorial page of the *Wall Street Journal* changed after Murdoch's purchase of the paper. In other words they asked

¹⁸ See p.308 of David McKnight (2010) Rupert Murdoch's News Corporation: A Media Institution with A Mission, *Historical Journal of Film, Radio and Television*, 30:3, 303-316, DOI: 10.1080/01439685.2010.505021: <http://dx.doi.org/10.1080/01439685.2010.505021>

¹⁹ Michael Wagner and Timothy Collins - Does Ownership Matter - *The case of Rupert Murdoch's purchase of the Wall Street Journal* - *Journalism Practice*, Vol 8, 2014, Issue 6, pp- 758 to 771 - Wagner is a Professor at the University of Wisconsin; Collins is a well-known journalist.

the question: did Rupert Murdoch's acquisition of the *Wall Street Journal* systematically change the paper's editorial voice?

In their article, they present the first systematic evidence that there are significant differences in the editorial page of the *Wall Street Journal's* support for government action, attention paid to the two major parties, and tone toward both Republicans and Democrats in the pre- and post-Murdoch eras. More specifically, they demonstrate that Rupert Murdoch's *Wall Street Journal* takes a more active opposition to government intervention on political issues, mentions Democrats more often, treats Democrats more negatively, and is more positive to Republicans than the editorial page was under Bancroft family ownership.

Further, they note that the differences in News Corporation's *Wall Street Journal* stand in stark contrast to the behavior of two other major newspapers that did not change publishers over the same time period—one with a conservative editorial page (*Washington Times*—WT) and one with a liberal editorial page (*The New York Times*—NYT).

Their evidence shows that

- “the WSJ exhibited a broad, ideological shift to the right subsequent to Murdoch's purchase of the paper” and that it “fundamentally changed that paper's editorial page from what it was under Bancroft family ownership and with respect to how it compared to other major newspapers.”
- the *Wall Street Journal's* editorial page is a ‘very different place’ under Rupert Murdoch/News Corporation's ownership than it was under Bancroft family ownership.
- Democrats were much more likely to become the focus of editorial content and when they were mentioned, they were treated far more negatively after Murdoch's purchase of the paper than before.
- Crucially, when comparing the changes the *Wall Street Journal* exhibited to the behavior of two major newspapers that did not undergo changes in ownership, they demonstrate that the differences in the *Wall Street Journal's* editorial were generally unique from a statistical perspective and always more pronounced from a substantive perspective.
- The *Wall Street Journal* has become, and is likely to continue to be, a much more conservative paper on the editorial side than it has been over the past several decades—a time during which the paper developed a reputation as a conservative news source.
- Given the great effects that editorials can have on reporters the *Wall Street Journal's* change in ownership could have consequences on the tone and slant of the paper's news reporting, what the WSJ's own columnists write in their op-eds, and how the paper's readers evaluate and behave toward political candidates and issues.

While all three newspapers exhibited some statistically significant changes in the post-Murdoch era, the authors found that the *Wall Street Journal* exhibited the largest statistical and

substantive changes, clearly demonstrating the marked impact that assumption of control by the Murdoch Family Trust may be expected to cause.

2.3 ***Bruce Bartlett - Fox consistently peddles propaganda***

In his comprehensive 2015 review of this kind of research into the links between control and editorial choice - "*How Fox News Changed American Media and Political Dynamics*" - the respected and influential Washington journalist, Bruce Bartlett,²⁰ notes a number of interesting examples of bias in Rupert Murdoch's outlets:²¹

- the reaction of Pulitzer Prize-winning columnist Leonard Pitts Jr. of the *Miami Herald* to a rare Fox apology for the extreme anti-Muslim views of one of its contributors, which were widely ridiculed in the European press:

*"In America, it has come to seem normal that a major news organization functions as the propaganda arm of an extremist political ideology, that it spews a constant stream of racism, sexism, homophobia, Islamophobia, paranoia and manufactured outrage, and that it does so with brazen disregard for what is factual, what is right, what is fair, what is balanced — virtues that are supposed to be the sine qua non of anything calling itself a newsroom."*²²

- **Right-wing bias became commonplace at Fox:** how, buoyed by its success as an explicitly conservative network, it appears that right-wing bias, including inaccurate reporting, became commonplace on Fox. For example:
 - A study of network coverage of the Iraq and Afghanistan wars in 2005 found that Fox was alone in supporting the Bush administration during a period when the wars were going badly by any objective standard. It concluded that "*scholars should consider Fox as alternative, rather than mainstream, media.*"²³
 - Fox instructed its on-air talent to avoid using the term "public option" when discussing health reform and are required to say that global warming is merely a theory "*based on data that critics have called into question.*"²⁴
 - A 2010 study found that Fox actively spread rumors and inaccurate information about a proposed mosque planned for lower Manhattan.²⁵
 - A 2012 study found that Fox takes a dismissive tone toward climate change and interviews a much larger number of doubters than believers. Fox viewers are

²⁰ About Bruce Bartlett - <https://www.creators.com/author/bruce-bartlett>

²¹ See <http://ritholtz.com/2015/05/how-fox-news-changed-american-media-and-political-dynamics/>

²² See the Miami Herald, 24 Jan, 2015 - <http://www.miamiherald.com/opinion/opn-columns-blogs/leonard-pitts-jr/article8028834.html>

²³ Sean Aday, "Chasing the Bad News: An Analysis of 2005 Iraq and Afghanistan War Coverage on NBC and Fox News Channel," *Journal of Communication*, 60:1 (March 2010): 144-64.

²⁴ "Fox's Unbalancing Act," Los Angeles Times (December 17, 2010)

²⁵ Erik Nisbet and Kelly Garrett, "Fox News Contributes to Spread of Rumors About Proposed NYC Mosque," Ohio State University (October 14, 2010).

much more likely to be skeptical of global warming. A 2014 study found that 72 percent of references to climate change on Fox in 2013 were misleading.²⁶

- Fox consistently downplays gun violence.²⁷
- **Fox promotes political propaganda:** how Fox consistently peddles propaganda and that Fox long ago ceased being anything remotely akin to an objective news source and now functions basically as a propaganda arm of the Republican Party.
 - CNN president Jeff Zucker told the Television Critics Association in 2014, “*The Republican Party is being run out of News Corp. headquarters masquerading as a cable news channel.*”²⁸
 - Political scientist Jonathan Bernstein: “*It’s a real mistake to call Fox a conservative channel. It’s not. It’s a partisan channel....To begin with, bluntly, Fox is part of the Republican Party. American political parties are made up of both formal organizations (such as the RNC) and informal networks. Fox News Channel, then, is properly understood as part of the expanded Republican Party.*”²⁹
 - Pulitzer Prize-winning journalist Thomas Ricks: “*I think the emphasis on Benghazi [on Fox] has been extremely political, partly because Fox is operating as the wing of the Republican Party.*”³⁰
 - Former *The New York Times* executive editor Howell Raines: “*For the first time since the yellow journalism of a century ago, the United States has a major news organization devoted to the promotion of one political party.*”³¹

²⁶ Lauren Feldman et al., “Climate on Cable: The Nature and Impact of Global Warming Coverage on Fox News, CNN, and MSNBC,” *International Journal of Press/Politics*, 17:1 (January 2012): 3-31. See also Jon A. Krosnick and Bo MacInnis, “Frequent Viewers of Fox News Are Less Likely to Accept Scientists’ Views of Global Warming,” Stanford University (December 2010).

²⁷ Brian Stetler, “At Fox News, Less Attention Paid to Gun Debate Than Elsewhere,” *New York Times* (April 19, 2013)

²⁸ Quoted on TV Guide’s twitter feed (January 10, 2014)

²⁹ Jonathan Bernstein, “Understanding Fox News,” *The New Republic* (October 27, 2010)

³⁰ Quoted in “Thomas Ricks Accuses Fox News of ‘Operating as a Wing of the Republican Party,’” *Huffington Post* (November 27, 2012)

³¹ Howell Raines, “Why Don’t Honest Journalists Take on Roger Ailes and Fox News?” *Washington Post* (March 14, 2010)

Section 3. Update on the independence of the boards of 21C Fox and News Corp under NASDAQ rules

Our briefing to OFCOM in March addressed claims about the independence of the 21C Fox and News Corp boards made in Allen & Overy's preliminary briefing to the Secretary of State of 20 December, 2016 and 21C Fox's letter to her of 8 March. These were key to 21C Fox's argument that the Transaction would not increase the scope for co-ordination of the editorial output of the News Corp newspapers and Sky News or the operational integration of Sky News and News Corps newspapers.³²

We drew OFCOM's attention to the fact that Elaine Chao's resignation from the News Corp board in January ended its nominal majority of independent directors under NASDAQ rules. News Corporation disclosed this to the S.E.C. at the relevant time but, despite this being a crucial development to the argument it put to the Secretary of State in the preceding December, 21CF failed to take the opportunity to explain the change to the Secretary of State in a letter of 8 March to her. That letter, nevertheless, discussed control issues at length.

Since then, Kelly Ayotte has been appointed to the News Corp board as an independent director and this reinstates its nominal independence under NASDAQ rules. However, that nominal independence does not address the central issue raised by the Iron Workers, Stricklin and Amalgamated Bank claims as well as the sexual and racial harassment claims highlighted in our earlier submissions - that supposedly independent board members are completely ineffective in opposing the Murdoch Family Trust's control of 21C Fox and News Corporation.

Conclusion

21C Fox has distorted OFCOM's position on control and media plurality to suit its own argument. It has emphasised board independence and then failed to be transparent with the Secretary of State about a material change to this under NASDAQ rules. This is all consistent with the compelling evidence of corporate governance failings and disregard for broadcasting standards which are common to Rupert Murdoch's businesses.

It is clear that, wherever he is allowed, Rupert Murdoch uses his control of these businesses to promote his own divisive ideological and economic agenda aggressively. We respectfully submit that the CMA should be wary of any representations made by 21C Fox concerning the issue of common control and should conclude that that the changes brought about by this Transaction will be highly damaging to media plurality and broadcasting standards in the U.K..

³² See para 1.7(c) (i) and (ii) of Allen & Overy's preliminary briefing of 20 December, 2016.