

Defiance, not compliance: the culture and behaviour of Murdoch- owned companies

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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.

Contact: Alex Wilks or Alaphia Zoyab.

About this report

This report 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. 21st Century Fox and News Corporation: the Murdochs' common control
2. Fox News: broadcasting non-compliance.

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

This submission aims to provide the CMA with the views it is seeking on “the record of the Parties’ compliance with broadcasting and other applicable regulations, and their broader attitude to compliance in general”.¹ Specifically, this submission addresses Theory of Harm 3 identified by the CMA, which states:

“As a result of the Transaction, there will not be a genuine commitment to broadcasting standards at the merged entity.”²

Acting unethically and breaking rules is the norm at many enterprises owned and run by the Murdochs. A series of major corporate governance scandals have engulfed their companies. Nell Minow, of ValueEdge Advisors, summarised their record as follows, “Fox received an F rating, based on a report-card style A-F assessment of governance risk, only because there was no lower grade. This ... pervades all of the various offshoots and subsidiaries.”³ Fox’s full takeover of Sky poses a serious risk to the public on broadcasting standards grounds.⁴

Our analysis of the corporate governance scandals at some prominent Murdoch-owned companies reveals patterns of:

- relentless pressure to seek commercial success and political power, at the expense of ethical and legal boundaries;
- statements of support, promotions, financial rewards, and re-hiring of executives who have committed offences, signalling that loyalty and results trump compliance;
- using illegal and aggressive tactics such as hacking and espionage as tools to generate news, or to gain an advantage over competitors and staff;
- using out-of-court settlements to silence staff, competitors and victims who seek justice;
- using arbitration clauses in employment contracts to prevent staff from going to court;
- misleading regulators, shareholders, and competitors.

This pattern was borne out during the first four months of the 21st Century Fox (21C Fox) Sky bid. In December 2016, Allen & Overy, acting for 21C Fox, advised Karen Bradley, the

¹ This submission should be read in the context of a related submission by Avaaz to the CMA covering on screen broadcasting standards, and of previous submissions made by Avaaz to the DCMS and Ofcom.

² Competition & Markets Authority, ‘Anticipated Acquisition By 21st Century Fox, Inc Of Sky Plc: Issues statement’ (10 October 2017), p 19, available at: <https://assets.publishing.service.gov.uk/media/59db8a2840f0b63118216841/fox-sky-issues-statement.pdf>

³ Letter to Secretary of State, Karen Bradley from Nell Minow (14 July 2017).

⁴ The Secretary of State asked the CMA to consider in more detail whether “corporate governance failures [cannot] be seen in isolation to their impact on broadcasting standards because the possibility exists of a corporate culture that does not prioritise the need for regulatory compliance.” DCMS letter to 21C Fox, and to Sky, dated 12 September 2017.

Secretary of State, that the company “has adopted strong governance measures and controls to ensure it meets the highest standards of corporate conduct”, in their preliminary submission on the bid. These measures centre on “the rapid escalation of material issues” to the full 21C Fox Board.”⁵ However, in the weeks after Fox’s lawyers wrote this, the Fox board failed to obtain details of a massive \$32 million settlement by star Fox News anchor Bill O’Reilly of a series of claims advanced by his colleague Lis Wiehl. These claims included repeated harassment, sending of explicit material, and ‘non-consensual sexual relations’.⁶

In mid-October 2017, during the CMA’s review, 21C Fox told the New York Times it was not privy to the amount of Mr. O’Reilly’s January settlement. The company viewed this agreement between two staff who had worked together on Fox News for 15 years, as “a personal issue between the two of them”. This failure to probe O’Reilly’s sixth known settlement with staff was especially stark as Fox News was in the process of renewing his contract for four years and awarding him a 30 per cent pay rise. The New York Times reported that Rupert Murdoch, then acting CEO of Fox, claimed not to know the details of the January settlement. And that the settlement bound the victim to silence by paying her over a period of time, while ensuring that all photos, text messages and other communications between her and O’Reilly would be destroyed.

This submission briefly reviews several other significant scandals and presents evidence of the above patterns, plus suggestions for how the CMA can obtain a fuller picture:

1. Fox News - a subsidiary of 21st Century Fox with an epidemic of sexual and racial harassment;
2. News America Marketing - a subsidiary of News Corporation that has settled claims amounting to almost \$1 billion for fraud, espionage and hacking;
3. NDS - a former subsidiary of News Corporation convicted of computer hacking and sabotage in breach of the Federal Communications Act and US criminal law;
4. News of the World - a former subsidiary of News International, closed down after industrial-scale phone hacking;
5. The Sun - a subsidiary of News Group Newspapers, currently being sued by over 70 individuals for phone hacking cases, and;
6. Various Australian broadcasting companies - misleading regulators and breaking rules.

⁵ Allen & Overy, ‘Offer by 21C Fox for the Remaining Shares in Sky PLC: Preliminary Briefing to the Department for Culture, Media & Sport’, (20 December 2016), pa 2.10 and 2.11.

⁶ Emily Steel and Michael S. Schmidt, ‘Bill O’Reilly Settled New Harassment Claim, Then Fox Renewed His Contract’ (*The New York Times*, 21 October 2017), available at: <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>.

A rigorous evaluation of these considerations would show that 21CF and the Murdochs are not committed to “the spirit as well as the letter of the broadcasting standards”⁷ just as they are not committed to the spirit or letter of other business rules. A 100% takeover of Sky by Fox would therefore be likely to worsen Sky’s approach to corporate governance and implementing applicable regulations, including broadcasting standards.

The Murdochs run their companies across contexts and jurisdictions by frequently silencing whistle-blowers, offering up ‘paper-only policies’, rewarding or re-hiring staff involved in illegal tactics, and continuing non-compliant practices. This flagrant disregard for regulatory compliance as an employer, a market competitor, and as a broadcaster is accompanied by a repeated resort to aggressive anti-competitive and illegal practices. We urge the CMA to assign equal weight to all instances of regulatory non-compliance in Murdoch-owned enterprises until it is satisfied it understands the pattern and attitude which underlie them.

Annex 1 of this report provides suggestions of documents and witnesses which the CMA may find useful in its inquiries.

⁷ DTI, ‘Enterprise Act 2002: Public Interest Intervention in Media Mergers: Guidance on the Operation of the Public Interest Merger Provisions Relating to Newspaper and Other Media Mergers’ (May 2004), available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/595816/file14331__1_.pdf.

Corporate governance scandals - a culture of defiance

1. Sexual and racial harassment at Fox in the US

The epidemic of sexual and racial harassment at Fox News and other Fox affiliates in the US goes to the heart of the company's attitude to compliance. Avaaz made a submission to Ofcom in March on this issue, which concluded that:

“Investigative news reports, victims' testimonies, and court documents paint a picture of a management with no meaningful accountability and no credible governance structure”.

Avaaz cited a legal complaint by one victim of alleged sexual harassment that “[T]he Murdochs have been misleading the public into believing that they are taking action. In fact, they have done the opposite”, and drew attention to Roger Ailes getting a \$40 million severance payment, rather than being dismissed for cause when his sexual harassment was uncovered.⁸

Revelations in the New York Times on 21 October 2017 show that a very similar pattern was repeated by the Murdochs in January/February this year. Indeed, they actively participated in a decision to protect their star presenter Bill O'Reilly without regard to the numerous sexual harassment allegations he had settled and was in the process of settling personally.⁹ In early 2017, Rupert Murdoch, then acting CEO of Fox News, oversaw Bill O'Reilly making his sixth settlement for sexual harassment, for \$32 million, then immediately awarded him a 30 per cent pay rise as part of a four year contract extension worth a total of \$100 million.

In the statement that Fox sent the NY Times, there are further troubling indications of Fox's attitude towards compliance. It dismisses the \$32 million settlement as a “personal issue between the two of them” (ie: between Bill O'Reilly and Lis Wiehl), despite the fact that they had worked together at Fox for 12 years.¹⁰ And with regards to his contract extension, his repeated misdemeanours and the signal sent to other Fox staff appear to have played no part. In a statement responding to the NY Times, 21st C Fox says Fox News “surely would have wanted to renew” Mr. O'Reilly's contract, noting, “he was the biggest star in cable TV.”¹¹ 21st Century Fox claimed all the evidence was “equivocal”, in its deposition to Ofcom earlier this year.¹²

⁸ Tantaros Andrea vs. Fox News network, LLC (157054/2016).

⁹ Emily Steel and Michael S. Schmidt, 'Bill O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract' (*The New York Times*, 21 October 2017), available at: <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>.

¹⁰ Emily Steel and Michael S. Schmidt, 'Bill O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract' (*The New York Times*, 21 October 2017), available at: <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>.

¹¹ Emily Steel and Michael S. Schmidt, 'Bill O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract' (*The New York Times*, 21 October 2017), available at: <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html>.

¹² Ofcom, 'Decision Under Section 3(3) Of The Broadcasting Act 1990 And Section 3(3) Of The Broadcasting Act 1996: Licences Held By British Sky Broadcasting Limited' (11 September 2017), pa 57, available at: https://www.ofcom.org.uk/__data/assets/pdf_file/0013/103621/decision-fit-proper.pdf.

This fundamentally undermines the claim by Fox’s lawyers’ to the Secretary of State in December 2016 that Fox “has adopted strong governance measures and controls to ensure it meets the highest standards of corporate conduct” and casts doubt on Fox’s entire evidence to UK authorities to date. Specifically, 21st C Fox claimed that it had established an “enhanced global compliance programme, including a global compliance steering committee” claiming these arrangements ensured the “rapid escalation” of material issues” from “individual businesses to the Independent directors of the Audit Committee and the full Board.”¹³

As part of his defence, Bill O’Reilly has stated that in the more than 20 years he worked at Fox News, “not one complaint was filed against him with the Human Resources Department or Legal Department by a coworker.”¹⁴ If this is true, this further undermines claims by Fox that its corporate governance mechanism meets the highest standards. The CMA must investigate whether the culture of fear and retaliation in the organisation meant that such governance systems were bound to fail.

The CMA must use its powers of investigation to the fullest extent to understand the failures of corporate governance at Fox. Until the CMA has had insight into how decisions were made based on looking at the full context, including minutes of meetings, it will be impossible to judge their broader attitude towards regulatory compliance and infringements to ascertain their genuine commitment to broadcasting standards.

Protecting Bill O’Reilly - despite serial wrongdoing

One of Bill O’Reilly’s producers, Andrea Mackris, filed a five-count lawsuit alleging sexual harassment in 2004. Her claims were backed up with a recording she had made of him phoning her in the middle of a sex act, which she threatened to make public. The transcript of the recording includes incriminating details such as the following:

“You would basically be in the shower and then I would come in and I’d join you and you would have your back to me and I would take that little loofa thing and kinda’ soap up your back...rub it all over you, get you to relax, hot water ... I would start to massage your boobs ...”¹⁵

Roger Ailes’ biographer, Gabriel Sherman, who investigated the internal workings at Fox News said in his 2014 book, that as the senior leadership at Fox, which included Roger Ailes, the

¹³ Allen & Overy, ‘Offer by 21C Fox for the Remaining Shares in Sky PLC: Preliminary Briefing to the Department for Culture, Media & Sport,’ (20 December 2016), pa 2.10 and 2.11.

¹⁴ ‘Statement by Mark Fabiani on Behalf of Bill O’Reilly Relating to the New York Times Smear Piece’ (21 October 2017), available at: <https://www.billoreilly.com/g/October-21-Statement/881.html>.

¹⁵ ‘O’Reilly Hit with Sex Harassment Suit’ (*The Smoking Gun*), available at: <http://www.thesmokinggun.com/file/oreilly-hit-sex-harass-suit?page=15>.

CEO, as well as Rupert Murdoch himself, discovered the details of O'Reilly's wrongdoing, their top priority was to ensure their biggest rated-star O'Reilly was protected. The book states:

"Ailes was furious. So was Murdoch, who made it clear that O'Reilly - and not News Corp - would be responsible for any settlement. Ailes may have been livid at his star, but he needed to protect Fox's biggest brand."¹⁶

Bill O'Reilly was so sure of Fox's backing that he threatened Andrea Mackris with a counter-suit alleging extortion, stating:

*"If you cross Fox News channel, it's not just me, it's [Fox President] Roger Ailes who will go after you. I'm the street guy out front making loud noises about the issues, but Ailes operates behind the scenes, strategises and makes things happen so that one day BAM! The person gets what's coming to them but never sees it coming."*¹⁷

Such bravado was not misplaced as Bill O'Reilly was only fired 13 years later under pressure from a federal investigation and Ofcom's fit and proper probe. Indeed, despite Roger Ailes' participation in the cover-up, Ailes was named to the "Office of the Chairman, an elite group of a half dozen executives who ran the company."¹⁸

As these new details from the New York Times investigation show, Fox officials and the Murdochs have not been fully transparent with British authorities. Indeed, new details released by Bill O'Reilly himself show that there is yet more detail to unearth on Fox's internal culture and corporate governance. He states that after dozens of women came forward to complain to Fox, naming several perpetrators, Fox settled cases worth almost \$100 million. If that is accurate that is double the number that Fox has disclosed¹⁹ to its shareholders.²⁰ Concealed settlements remain the subject of an ongoing federal investigation.

Serial sexual and racial harassment, starting at the top

One of the most troubling aspects of the corporate culture at Fox News is how Roger Ailes, the CEO, now implicated in dozens of lawsuits oversaw a regime and culture of "top-down" sexual

¹⁶ 'O'Reilly Hit with Sex Harassment Suit' (*The Smoking Gun*), available at: <http://www.thesmokinggun.com/file/oreilly-hit-sex-harass-suit?page=15>.

¹⁷ 'O'Reilly Hit with Sex Harassment Suit' (*The Smoking Gun*), available at: <http://www.thesmokinggun.com/file/oreilly-hit-sex-harass-suit?page=11>.

¹⁸ Gabriel Sherman, *The Loudest Voice in the Room: How the Brilliant, Bombastic Roger Ailes Built Fox News--and Divided a Country* (Random House, 2014), p 305.

¹⁹ 21st Century Fox, 'United States Securities and Exchange Commission Form 10K: Annual Report,' (For the fiscal year ended June 30, 2017), p 125, available at: <http://investor.21cf.com/secfiling.cfm?filingid=1564590-17-17693&CIK=1308161>.

²⁰ 'Statement by Mark Fabiani on Behalf of Bill O'Reilly Relating to the New York Times Smear Piece' (21 October 2017), available at: <https://www.billoreilly.com/g/October-21-Statement/881.html>.

and racial harassment.²¹ What all of Fox's depositions to Ofcom and the Secretary of State fail to do is show how their corporate governance mechanism accounted for wrongdoing by its most senior figures. And if it did, why it failed so spectacularly in containing Roger Ailes and other powerful figures.

As CEO of Fox News, Roger Ailes had the power to make or break women's careers. Only those loyal to him could advance at Fox. That meant that he could impose a strict dress code²² - skirts only. Ailes once famously screamed when a presenter Catherine Crier wore trousers, "Tell Catherine I did not spend x-number of dollars on a glass desk for her to wear pant suits."²³

In case after case there is evidence that individuals who dare to take on the Murdochs or their executives are confronted with a smear campaign by Murdoch-owned press outlets. For example, Murdoch's New York Post newspaper smeared Andrea Mackris in several stories. The headlines, both in October 2004, include, "EXCLUSIVE: O'Reilly Accuser in Bar Blow Up"²⁴ and "Boozy Boast - Gal said she'd ruin O'Reilly: Bar owner."²⁵

Those smear campaigns have often resulted in out of court settlements. Bill O'Reilly eventually settled the Mackris lawsuit out of court for an alleged sum of \$9 million. He entered into a string of other settlements amounting to nearly \$13 million that continued well into 2016. His misconduct, which would have been challenged in a court pursuant to US employment discrimination law,²⁶ was kept under wraps due to mandatory non-disclosure clauses contained in each of these settlements. The latest NY Times revelations show his settlements are now at \$45 million. He denies all the allegations.

The executives of the parent company 21st C Fox told Ofcom that they did not know about harassment at Fox News until July 2016. Ofcom reported:

"In answer to an information request (which by law must be answered truthfully, subject to financial penalty or imprisonment) Fox has said that no executive director was aware of any allegations of sexual and racial harassment at Fox News prior to July 2016."

²¹ 11 Sue Fox News, Citing 'Intolerable' Racial Bias, New York Times, 25 April 2017, available at https://www.nytimes.com/2017/04/25/business/media/fox-news-racial-discrimination-lawsuit.html?_r=0

²² Dayanita Ramesh, "'Well It Looks Like I'll Be Able To Wear Pants': Fox News Personality Alludes To Fox's Sexist Dress Code Policy' (*Media Matters*, 7 January 2016), available at:

<https://www.mediamatters.org/blog/2016/01/27/well-it-looks-like-ill-be-able-to-wear-pants-fo/208228>

²³ Dayanita Ramesh, "'Well It Looks Like I'll Be Able To Wear Pants': Fox News Personality Alludes To Fox's Sexist Dress Code Policy' (*Media Matters*, 7 January 2016), available at:

<https://www.mediamatters.org/blog/2016/01/27/well-it-looks-like-ill-be-able-to-wear-pants-fo/208228>

²⁴ Gabriel Sherman, 'The O'Reilly Fracture' (*Newsweek*, 6 February 2014), available at:

<http://www.newsweek.com/oreilly-fracture-228136>.

²⁵ Dareh Gregorian, "'Boozy' Boast – Gal Said She'd Ruin O'Reilly: Bar Owner' (*New York Post*, 19 October 2004), available at: <http://nypost.com/2004/10/19/boozy-boast-gal-said-shed-ruin-oreilly-bar-owner/>.

²⁶ The US Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, sex, colour, national origin or religion.

However Ofcom failed to treat that claim with the necessary scepticism that the following facts should have warranted. Further reasons for such scepticism include:

- Allegations against Roger Ailes had become public in 2014 via the publication of his unofficial biography, which included a specific mention that Rupert Murdoch knew about Bill O'Reilly's sexual harassment scandal well before July 2016;²⁷
- Fox News signed a Consent Decree with the Equal Opportunity Employment Commission back in 2006 to ensure Fox News senior staff receive training in federal and state laws to stop discrimination. Despite being party to a court-monitored undertaking from 10 years ago, Fox was unable to improve its internal culture through the introduction of the new 2012 corporate governance structure.
- In 2004 the Andrea Mackris lawsuit against Bill O'Reilly was front page headline news in Murdoch's rival newspaper the New York Daily News and her court complaint was posted on the internet at that time.²⁸

Cover-ups, not compliance

Fox has tried to cover up the scale of the epidemic of sexual and racial harassment for many years, at least since 2002. Fox News has made a series of settlements with victims of sexual harassment but allegedly disguised these payments as salaries or compensation leading the United States Justice Department to launch a federal investigation.²⁹ This federal investigation was not revealed proactively to shareholders by Fox but instead leaked by an attorney whose client was subpoenaed to appear before a Grand Jury probing these payments.³⁰

The work culture at Fox News is also under investigation by the New York State Division for Human Rights.³¹ Fox faces lawsuits of sexual harassment, gender discrimination and a class action lawsuit for racial harassment from at least 23 current and former employees.

One of the reasons a lot of the scandals at Fox News have remained hidden from public view is that New York state has a statute of limitations of 3 years to report sexual harassment and many victims now cannot come forward. Fox also uses forced arbitration clauses in its contracts that deny employees access to public court hearings.

Concerns about the way the company has been run have also been raised by the NY City Public Advocate Letitia James to the US Securities and Exchange Commission. She has urged

²⁷ Gabriel Sherman, *The Loudest Voice in the Room: How the Brilliant, Bombastic Roger Ailes Built Fox News--and Divided a Country* (Random House, 2014), p 300.

²⁸ Image available at:

https://img.huffingtonpost.com/asset/58e4f3a816000021004d8de2.jpeg?ops=scalefit_720_noupscale

²⁹ Brian Stelter, 'Exclusive: Federal probe of Fox News expands' (CNN, 27 April 2017), available at: <http://money.cnn.com/2017/04/27/media/fox-news-federal-investigation/index.html>.

³⁰ Matthew Garrahan and Kara Scannell, *Federal probe into Fox News casts shadow over Murdoch empire*, at: <https://www.ft.com/content/26ce771c-1916-11e7-9c35-0dd2cb31823a>.

³¹ Gene Maddaus, 'Fox News Faces Probe From N.Y. Human Rights Division, Attorney Says' (*Variety*, 19 June 2017), available at: <http://variety.com/2017/tv/news/fox-news-human-rights-new-york-lisa-bloom-1202470426/>.

the SEC to investigate whether the network's failure to disclose big payments means it has been misleading shareholders as well.³²

Back in July 2006, Fox News signed a Consent Decree issued and monitored by the United States District Court, Southern District of New York.³³ According to the agreement that the two parties Fox News and the Equal Employment Opportunity Commission entered into, Fox was to provide "trainings in federal laws prohibiting discrimination in employment for all current employees and particularly for all management/supervisory employees." It is clear that such training was completely ineffectual given that a full-scale sexual and racial harassment scandal had blown open in 2016.

Roger Ailes and Bill O'Reilly have together received \$65 million in payouts from the company on their way out. In Ailes' case, Rupert Murdoch personally praised his contribution to the growth of Fox News.

Such denial is in line with the "one rogue reporter" line taken in the phone hacking scandal, but one that News Corp. eventually had to abandon as authorities forced them to cooperate. The CMA must probe whether this claim of ignorance by the entire Board of 21st Century Fox is true. Kindly look at Annex 1 for questions that we propose the CMA ask of Fox and others, including suggestions of witnesses that the CMA should invite to assist their inquiry.

2. News America Marketing: sabotaging the competition in direct marketing

Relevant to the CMA's inquiry into broadcasting standards is a major scandal involving serious allegations of corporate espionage, computer hacking and anti-competitive practices by News America Marketing ("NAM"), a consumer goods marketing business wholly owned by News Corp. NAM creates and sells promotional opportunities for consumer goods, for example through coupon inserts found in newspapers, and in-store adverts on aisle displays and on shopping trolleys.

The allegations speak to a deliberate attempt to establish a monopolistic position using illegal practices. If similar practices were used to undercut competition with other broadcasters and print media owners in the UK, that could allow the Murdochs to increase their market power, and undermine broadcasting standards.

³² Jillian Jorgensen, 'EXCLUSIVE: Public Advocate Letitia James demands city and federal investigation into Bill O'Reilly' (*New York Daily News*, 12 April 2017), available at: <http://www.nydailynews.com/new-york/manhattan/letitia-james-demands-nyc-fed-probe-bill-o-reilly-article-1.3044904>.

³³ United States District Court, Southern District of New York. *Equal Opportunity Employment Commission vs Fox News Network LLC*, available at: <https://www.clearinghouse.net/chDocs/public/EE-NY-0058-0002.pdf>.

News Corp. has paid out approximately \$936 million in settlements for a series of lawsuits against NAM, a sum that dwarfs settlements for phone hacking or for sexual harassment by other Murdoch-owned companies.

News Corp. settled for \$656 million with marketing competitors, one of which had previously obtained a \$300 million jury verdict against NAM. In 2016, News Corp. also settled for \$280 million in a class-action lawsuit brought by its clients, several major packaged goods brands. A further lawsuit, this time for \$560m, again by Valassis Communications, continues. It alleges that NAM continued to behave anti-competitively after its 2010 settlement, ultimately driving out its rivals from the in-store promotions business.³⁴

Lawsuits against the company alleged an orchestrated scheme over more than a decade to force both retail chains and consumer goods companies into long-term exclusive contracts to suppress competitors' access to market, in violation of U.S. federal and state antitrust laws. The lawsuits additionally alleged breaches of other laws based on activities such as hacking competitors' computers to obtain customer lists and staff addresses.

The markets concerned were:

1. Newspaper/magazine inserts: The market for consumer goods manufacturers like Heinz to insert free-standing insert coupon booklets into newspapers, a market NAM allegedly came to control 55% of by 2009.
2. In-store displays: The market for consumer goods manufacturers to promote their products to shoppers in grocery stores, drugstores, mass retailers, home improvement stores and bargain stores throughout the United States, a market NAM allegedly came to control 90.5% of by 2009.

NAM was also accused of 'unlawful tying' by using its in-store monopoly to monopolize the coupon market, offering its clients large discounts from its regular in-store prices, but only if they exclusively purchased their coupons from NAM. NAM also allegedly made large up-front payments to supermarkets to guarantee they would deal exclusively with NAM. This exclusivity then enabled them to raise in-store promotion prices artificially, prompting allegations that NAM overcharged clients by as much as 40%. Competitors alleged this practice would lead to "tipping," where smaller firms are forced to exit the market after losing a critical mass of business.³⁵ News Corp. internally acknowledged that it sought to build contractual barriers to make it difficult, if not impossible, for competitors to compete.³⁶

³⁴ 'Byline Investigates: Murdoch, Mobsters And News America Marketing' (*Byline*, 22 September 2017), available at: <https://www.byline.com/project/76/article/1835>.

³⁵ *Dial Corp v News Corp.*, Third Amended Complaint (S.D.N.Y. Aug. 16, 2013) 2013 WL 5475241 at para 85; see also David Folkenflik, 'Beyond Sexual Harassment, Lesser Known Scandals Could Cost The Murdochs A \$14B Deal' (*NPR*, 24 April 2017), available at: <http://www.npr.org/2017/04/24/525337958/beyond-sexual-harassment-lesser-known-scandals-could-cost-the-murdochs-a-14b-dea>.

³⁶ *Dial Corp v News Corp.*, Third Amended Complaint (S.D.N.Y. Aug. 16, 2013) 2013 WL 5475241 at paras 12, 72, 87, 122.

NAM was also accused of devious and illegal practices to destroy the competition. These included hacking into computers owned by competitors (such as Floorgraphics) to obtain customer lists, tearing down competitors' in-store signs and ads, and telling customers that promotions they had placed via competitors had failed to appear in the stores. NAM also misrepresented competitors' in-store advertising compliance rates as well as their financial capacity. The Chief Operating Officer of NAM, Paul Carlucci, threatened to fire any employee who did not support exclusive control by NAM of these markets. He was later promoted to CEO of NAM, in an apparent signal that he enjoyed the full support of News Corporation and the Murdoch Family Trust which controlled the business.

The attorney who took Carlucci's deposition in the Valassis case, Greg Curtner, agreed that Murdoch knew exactly what Carlucci was doing. Curtner said: "I have looked at the evidence and it's clear to me that Mr Rupert Murdoch is aware of what is going on, on a day to day basis, in his businesses. Mr Carlucci reports to Mr Murdoch." Answering why Murdoch chose not to rein in NAM, Curtner went on:

"The best answer to that question came from Mr Carlucci's own mouth: 'I work for a man who has to have it all and does not understand being told that he can't have it all'. That's the culture, shown time after time, in business activity after business activity, lawsuit after lawsuit. The legal fees are staggering."³⁷

NAM made significant and repeated efforts to prevent these cases coming to court. When a whistleblower, Richard Emmel, came forward with substantial evidence that News America Marketing was engaging in "criminal conduct against competitors", and employing "deceptive and illegal business practices" to defraud retailer customers, NAM filed a lawsuit accusing Emmel of six violations. NAM pressed its case with more than 300 pleadings to the Georgia courts.³⁸ Then, a few days after Floorgraphics started a civil lawsuit, NAM bought out Floorgraphics entirely, and stopped the legal proceedings.

³⁷ 'Byline Investigates: Murdoch, Mobsters And News America Marketing' (*Byline*, 22 September 2017), available at: <https://www.byline.com/project/76/article/1835>.

³⁸ 'Byline Investigates: Murdoch, Computer Hacking And The F.B.I.' (*Bylines*, 20 September 2017), available at: <https://www.byline.com/project/76/article/1829>.

3. NDS: hacking and sabotaging competitors in the set-top box industry

The NAM scandal exposed aggressive and illegal anti-competitive practices carried out by companies controlled by the MFT, including hacking and espionage against competitors. Similar practices have surfaced at NDS, a broadcast company which competes with Sky. NDS,³⁹ then 80% owned by News Corp (of which James Murdoch was non-executive director at the time), was a lynchpin in the success of Murdoch's pay-TV business.

Serious allegations of hacking and sabotage have been levelled against NDS, a set-top box software provider, in various court cases since 2002. NDS was an Israeli start-up bought by News Corp. in 1992.⁴⁰

NDS's core business was to produce smartcards used to manage the subscriptions of digital TV customers. A Sky competitor, ITV Digital, accused the company of hiring a computer hacker to obtain and then distribute the codes which allowed subscribers to watch ITV Digital for free. Meanwhile, Sky's signal remained encrypted. These allegations were also investigated by the BBC's Panorama programme.

ITV Digital eventually folded.

Similar allegations were made against NDS in 2002 by the French pay-TV company Canal Plus. But the facts never emerged in court as News Corp bought the part of the Canal Plus business that made the allegations.

Another company, EchoStar (now Dish Network) sued NDS in the US for "reverse engineering" its smartcards and then leaking the hacked information on the internet. While EchoStar won only \$1500 in statutory damages, the Federal Southern California District Court in 2008 found that NDS Group Americas had violated the Federal Communications Act and the California Penal Code.

News Corp has maintained that it hired a hacker to keep track of and catch other hackers and pirates.

4. News of the World: phone hacking in the newspaper industry

³⁹ NDS was acquired by Cisco in 2012.

⁴⁰ Michael Rundle, 'News Corp Firm Under Fire After BBC's Panorama Alleges Hacking Of ITV Digital' (*Huffington Post*, 27 March 2012), available at: www.huffingtonpost.co.uk/2012/03/27/news-corp-nds-bbc-itv-digital-ondigital-murdoch_n_1381735.html.

The phone hacking scandal at News of the World led to “huge failings of corporate governance” at News Corporation, the precursor company to 21st Century Fox.⁴¹ The cover-up, the convictions and massive settlements all point to a rogue corporate culture where generating salacious stories through illegal means was deeply embedded in the newsroom culture. Indeed, the integrity of the news gathering process was so heavily compromised and mired in illegality that the conclusion is inescapable: the Murdochs cannot be trusted in any of their enterprises to exhibit a genuine commitment to ordinary journalistic norms, including the impartiality and accuracy that underpin broadcasting standards.

The original Met Police enquiry into phone hacking at News of the World began in 2005 but led to just two convictions. Until 2010, the parent company, Murdoch’s News International, publicly maintained that it was just “one rogue reporter” who had hacked phones.⁴² By 2011, Murdoch was forced to abandon this claim after rival media groups exposed the scale of the cover-up both by News International and the police. The subsequent inquiry and its offshoots led to the arrests and interviews under caution of nearly 210 people and then the hacking trial of 2014.

Overall, there have been 9 convictions of News International staff for offences related to payments to public officials. 29 public officials and their relatives were convicted of accepting payments. The charges for these 38 individuals included: (1) conspiracy to intercept voicemails, (2) acquiring private subscriber information from British Telecom’s database; (3) breaches of the Data Protection act; (4) conspiracy to intercept communications without lawful authority; and (5) conspiracy to commit misconduct in public office.

In the most recent case, News Group Newspapers, publisher of the former News of the World agreed to settle claims of breach of confidence and misuse of private information after accepting that hacking had occurred. Former intelligence officer, Ian Hurst, whose computer was hacked, accepted substantial undisclosed damages from News Group Newspapers, having brought proceedings at London’s High Court against the Murdoch-owned group.⁴³

Hurst served in the Intelligence Corps and the Force Research Unit in Northern Ireland between 1980 and 1991, recruiting and running agents within Republican terrorist groups in order to obtain intelligence. Hurst said that he feared for the safety of many of the people with whom he had been in contact.

⁴¹ HOC Culture, Media and Sport Committee, ‘News International and Phone-Hacking’ (1 May 2012), p 122, available at: <https://publications.parliament.uk/pa/cm201012/cmselect/cmcmds/903/903i.pdf>.

⁴² Lisa O’Caroll, “Phone-hacking: 10 Years of Resignations, Cover-ups and Convictions’ (*The Guardian*, 11 December 2015), available at: <https://www.theguardian.com/media/2015/dec/11/phone-hacking-10-years-resignations-cover-ups-convictions>.

⁴³ PA Mediapoint, ‘Former Intelligence Officer Paid Damages By News Group Newspapers Over Computer Hacking’ (*Press Gazette*, 6 October 2017), available at: <http://www.pressgazette.co.uk/former-intelligence-officer-paid-damages-by-news-group-newspapers-over-computer-hacking/>.

The sheer magnitude of the phone and computer hacking resulted in it becoming one of the most expensive trials in British criminal history.⁴⁴

News International has admitted to phone hacking at the News of the World in several hundred phone-hacking claims and has made payments to victims and lawyers in relation to these charges amounting to nearly £500 million.⁴⁵

The Privileges Committee report cast further light on the culture of paying what was alleged to be “hush money” to employees guilty of criminal offences to deter them from co-operating with the police and prosecuting authorities. These payments were approved by News International Chief Executive, Les Hinton.

Employees at News of the World gave anonymous testimony to the National Union of Journalists saying, the pressure for stories was so relentless that some staff even suffered physical collapses at the office.⁴⁶ The Leveson Inquiry report concluded:

“It seems clear, therefore, that a drive for circulation increased the pressure on those working at the NoTW. The Inquiry heard from a number of former employees of the newspaper who were in complete agreement that the newsroom at NoTW was a very pressurised environment and that reporters were under pressure to deliver stories, preferably exclusive stories, regularly.”⁴⁷

An employment tribunal found that the ex-editor Andy Coulson presided over a culture of bullying.⁴⁸ The Leveson Inquiry report went further to state:

“Whether the pressures to perform amounted to bullying or not, it has been suggested by a number of witnesses that these pressures, both to deliver a story and to deliver sufficient evidence to make it legally defensible, may have led journalists to use

⁴⁴ Martin Evans, ‘At £100m, Phone Hacking Trial Makes History For Expense’ (*The Daily Telegraph*, 24 June 2014), available at: <http://www.telegraph.co.uk/news/uknews/phone-hacking/10924126/At-100m-phone-hacking-trial-makes-history-for-expense.html>.

⁴⁵ Dominic Ponsford, ‘News Corp Hacking Scandal Costs Total \$7m For Last Three Months Of 2015, Up 40 Per Cent On Previous Quarter’ (*Press Gazette*, 8 May 2015), available at: <http://www.pressgazette.co.uk/news-corp-hacking-scandal-costs-rise-512m/>.

⁴⁶ James Ball, ‘News of The World Journalists Reveal a Newsroom Culture of Bullying And Stress’ (*The Guardian*, 9 February 2012), available at: <https://www.theguardian.com/media/2012/feb/09/news-of-the-world-bullying-stress>.

⁴⁷ The Leveson Inquiry, ‘An Inquiry Into The Culture, Practices And Ethics Of The Press: Volume II’ (November 2012), p 497, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270941/0780_ji.pdf.

⁴⁸ Caitlin Fitzsimmons, ‘Ex-editor Andy Coulson bullied News of the World reporter, rules tribunal’ (*The Guardian*, 18 December 2008), available at: <https://www.theguardian.com/media/2008/dec/18/andy-coulson-bullied-news-of-the-world-reporter>.

whatever means were necessary, even if that meant stepping beyond the Editors' Code or the law."⁴⁹

Re-hiring offenders:

The hacking scandal and the convictions didn't seem to constrain the company's behaviour. In a leaked recording, Rupert Murdoch is heard assuring a gathering of Sun journalists:

*"What you're asking is, what happens if some of you are proven guilty? What afterwards? I'm not allowed to promise you - I will promise you continued health support - but your jobs - I've got to be careful what comes out - but frankly, I won't say it, but just trust me."*⁵⁰

Nick Parker, who was convicted of a criminal offence in December 2014 for handling stolen property, was rehired by the Sun newspaper.⁵¹ All staff received a memo from Sun's editor David Dinsmore, saying:

"We have given a commitment to every individual involved in the legal process that we would review their cases individually and that no decisions or actions would be taken without discussing it with them.

Following the conclusion of his trial in December, we have been talking to Nick about the issues surrounding his case and the events of 2010. The discussions have led us to the belief that punitive action against Nick would be disproportionate.

*Lessons have been learned from this experience by all of us in the newsroom. We would handle the story very differently today. We have improved processes in place to help support our decision-making and I want to thank each of you for embracing the enhancements in governance, which reflect the growth in business standards across our organisation".*⁵²

⁴⁹ The Leveson Inquiry, 'An Inquiry Into The Culture, Practices And Ethics Of The Press: Volume II' (November 2012), p 500, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270941/0780_ii.pdf.

⁵⁰ 'Rupert Murdoch Tape: Read Extracts from the Transcript' (*The Guardian*, 4 July 2013), available at: <https://www.theguardian.com/media/2013/jul/04/ruPERT-murdoch-tape-extracts-transcript>.

⁵¹ Roy Greenslade, 'Convicted Sun Journalist Nick Parker is Welcomed Back to the Newspaper' (*The Guardian*, 20 February 2015), available at: <https://www.theguardian.com/media/greenslade/2015/feb/20/convicted-sun-journalist-nick-parker-is-welcomed-back-to-the-newspaper>.

⁵² Roy Greenslade, 'Convicted Sun Journalist Nick Parker is Welcomed Back to the Newspaper' (*The Guardian*, 20 February 2015), available at: <https://www.theguardian.com/media/greenslade/2015/feb/20/convicted-sun-journalist-nick-parker-is-welcomed-back-to-the-newspaper>.

The message was clear: being individually implicated in court proceedings, or even a guilty plea or conviction, was no obstacle to further employment within the Murdoch newsroom and businesses. Rebekah Brooks was re-hired despite being the editor of the News of the World at the time the Milly Dowler story, based on hacking, was published. The court did not find her guilty, but the company did not make her take responsibility for this breakdown of journalistic ethics.

5. The Sun: phone hacking

Civil cases, brought by 91 phone hacking victims, are currently underway against The Sun, alleging that the Murdoch-subsidary News Group illegally obtained personal information about them.⁵³ Corporate governance failures have already been recognized by the court. Justice Mann, presiding over the cases, said News Group had “consistently failed to provide proper disclosure and to meet its disclosure obligations.”⁵⁴

The court has ordered News Group to disclose all invoices submitted by private investigators between 2010-2011 who were found to have used illegal means of acquiring personal information. News Group is expected to hand over at least 6000 invoices.

The judge has further called into question James Murdoch’s role in the phone hacking, by ordering that his laptop be searched for potentially relevant documents pertaining to the trial and demanding an explanation from News Group about why it had made hundreds of redactions on documents pertaining to the hacking cases. This is pertinent in light of Ofcom’s 2012 ‘fit and proper’ decision regarding News Group, which determined that James Murdoch’s conduct in relation to events at NGN “repeatedly fell short of the conduct to be expected of him as a chief executive officer and chairman.”⁵⁵ Ofcom found the company fit and proper only because James Murdoch had stepped down from running the company. Courts, shareholders and regulators alike have had grave reservations about the role James Murdoch has played at NGN in the past. He would have the key role CEO in shaping the culture, practices and outputs of the new merged entity.

Further, News Group has again relied upon its oft-used tactic of pay-outs to silence victims of its misconduct. The phone-hacking cases were due for trial in October 2017, but News Group recently settled 17 cases out of court with non-disclosure agreements. The trial would have aired allegations of phone-hacking and evidence deletion at The Sun newspaper, which News Group has always denied, and would have forced James Murdoch to take the stand.⁵⁶

6. Misleading regulators in the Australian broadcast industry

⁵³ Graham Ruddick, ‘Owner of The Sun Forced to Hand Over Invoices Before New Hacking Trial’ (*The Guardian*, 13 June 2017), available at: <https://www.theguardian.com/media/2017/jun/13/owner-of-the-sun-forced-to-hand-over-invoices-before-new-hacking-trial>.

⁵⁴ Graham Ruddick, ‘Owner of The Sun Forced to Hand Over Invoices Before New Hacking Trial’ (*The Guardian*, 13 June 2017), available at: <https://www.theguardian.com/media/2017/jun/13/owner-of-the-sun-forced-to-hand-over-invoices-before-new-hacking-trial>.

⁵⁵ Ofcom, ‘Decision Under Section 3(3) Of The Broadcasting Act 1990 And Section 3(3) Of The Broadcasting Act 1996: Licences Held By British Sky Broadcasting Limited’ (2012), pa 14, available at: <http://webarchive.nationalarchives.gov.uk/20170112202155/https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2012/ofcom-decision-on-fit-and-proper-assessment-of-sky>.

⁵⁶ Graham Ruddick, ‘News Group Settles 17 Cases Related To Allegations Of Criminality At The Sun’ (*The Guardian*, 7 September 2017), available at: <https://www.theguardian.com/uk-news/2017/sep/07/news-group-settles-17-cases-allegations-criminality-the-sun-phone-hacking>.

The Murdochs have repeatedly misled authorities in the UK and in other parts of the world. The CMA is interested in:

“the extent to which the Parties, both in the UK and in other jurisdictions in which they operate, have complied with the relevant rules on broadcasting standards and on applicable regulatory and corporate governance requirements more broadly”.⁵⁷

Avaaz and others have previously provided relevant evidence on the Murdoch takeovers of The Times and The Wall Street Journal. The ways that Murdoch Family Trust-controlled companies have misled Australian regulators over many decades are also pertinent.

John Menadue, who used to run Murdoch’s Australian news operations, was categorical when he described the Murdoch’s businesses in Australia earlier this year:

“It’s a rogue organisation and the Australian government should resist any attempt to expand the media power of the News organisation, which already controls 60 to 70 per cent of the metropolitan media in Australia.”⁵⁸

A brief analysis of the Murdochs’ track-record in Australia will help illustrate Mr Menadue’s unequivocal condemnation of how the Murdochs do business. Here are just a few examples:

Rupert Murdoch’s record of misconduct: In the 1980s the Australian Broadcasting Tribunal rejected a Murdoch bid for a Melbourne TV station and criticised Rupert Murdoch for giving “directly contradictory evidence” before the bid, claiming he would make no changes to the station.⁵⁹ It also found Mr Murdoch and his companies “guilty of four separate sets of contraventions of section 92 of the Australian Broadcasting and Television Act, and said that he had misled the Stock Exchange over share purchase.” In addition, the Australian Press Council has found him guilty of “misleading and unfair reporting, and of gaining an unfair advantage through distortion.”

Lachlan Murdoch’s record of misconduct: The Australian Communications and Media Authority (ACMA) also determined that Lachlan Murdoch and his business advisor Siobhan McKenna breached the commercial radio broadcasting directorship limits in section 56 of the Broadcasting Services Act 1992 when Murdoch became the director of a further radio station in the Brisbane-Nambour area between October and November 2010.⁶⁰

⁵⁷ Competition & Markets Authority, ‘Anticipated Acquisition By 21st Century Fox, Inc Of Sky Plc: Issues Statement’ (10 October 2017), p 20, available at: <https://assets.publishing.service.gov.uk/media/59db8a2840f0b63118216841/fox-sky-issues-statement.pdf>

⁵⁸ ‘Paul Murray’s Spectacular Sky Dummy Spit’ (*ABC Media Watch*, 3 July 2017), available at: <http://www.abc.net.au/mediawatch/transcripts/s4695558.htm?site=coffscoast>.

⁵⁹ The regulator’s transcript records Rupert Murdoch saying: “It would be madness to contemplate any changes at all... I wish to give an assurance to the tribunal that no change is contemplated at all”. Cited by Jonathan Aitken MP in the House of Commons on 27 January 1981, available at: <http://hansard.millbanksystems.com/commons/1981/jan/27/times-newspapers>.

⁶⁰ ACMA, ‘ACMA Finds Breach of Radio Directorship Limits’ (April 2011), available at:

Section 56 of the Act provides that a person cannot be a director of companies that are in a position to exercise control of more than two commercial radio licenses in the same licence area.⁶¹ Murdoch breached section 56 on 7 October 2010 when he was appointed as a director of Prime Media Group Limited, which is in a position to exercise control of Hot 91.1 FM - 4MCY. At that time, Mr Murdoch was also a director and a controller of a number of companies which were in a position to exercise control of Nova 106.9/4BNE and 97.3/4BFM.

The ACMA also found that Ms McKenna was a director of companies that controlled more than two radio licences in the combined Nambour/Brisbane radio licence area, and was in breach of section 56.⁶² ACMA revealed these breaches in January 2011, noting that Murdoch and McKenna had by then resigned from their additional roles in cooperation with the regulator.⁶³

Then there is the Murdoch's recent failed takeover of Network 10, which some media commentators believe might have breached cross media ownership laws. Mike Secombe describes how Lachlan Murdoch and his partner Bruce Gordon "drove [the Network] into administration in June. Their plan would have seen the network rid of a lot of its pesky debt and also put the weights on the Turnbull government to hasten the passage of regulatory changes advantageous to big players such as them. Then they would have bought it back from the administrators."⁶⁴ However, when the government took longer to pass the proposed media laws, and the American media giant CBS got involved, they lost ownership of the company.

www.acma.gov.au/Industry/Broadcast/Radio/Commercial-radio-standards/media-release-42011-14-january-acma-finds-breach-of-radio-directorship-limits.

⁶¹ ACMA, 'ACMA Finds Breach of Radio Directorship Limits' (April 2011), available at:

www.acma.gov.au/Industry/Broadcast/Radio/Commercial-radio-standards/media-release-42011-14-january-acma-finds-breach-of-radio-directorship-limits.

⁶² ACMA, 'ACMA Finds Breach of Radio Directorship Limits' (April 2011), available at:

www.acma.gov.au/Industry/Broadcast/Radio/Commercial-radio-standards/media-release-42011-14-january-acma-finds-breach-of-radio-directorship-limits.

⁶³ Lucy Battersby, 'In Ten Takeover, The Media Regulator Is Refusing To Prove Itself Useful' (*The Sydney Morning Herald*, 4 September 2017), available at:

<http://www.smh.com.au/business/media-and-marketing/in-ten-takeover-the-media-regulator-refusing-to-prove-itself-useful-20170901-gy8vsw.html>.

⁶⁴ Mike Secombe, 'Murdoch's Failure to Launch Fox Here' (*The Saturday Paper*, October 7 - 13, 2017), available at: '<https://www.thesaturdaypaper.com.au/news/politics/2017/10/07/murdochs-failure-launch-fox-here/15072948005316>'.

Conclusion

The Murdochs have frequently exhibited a fundamental disregard for the law, and for regulations designed to protect the public interest and ensure fair competition. Their approach is to protect senior executives at the expense of junior staff and the UK public, with an aggressive attitude to using settlements and their political reach to close down investigations that might harm them.

We urge the CMA to consider the evidence presented in this submission in its analysis of Theory of Harm #3, as presented in the Issues Statement, namely an inquiry into the Murdochs' genuine commitment to broadcasting standards, and an assessment of the likely compliance with broadcasting standards by a merged Fox/Sky.

The attached annex identifies specific suggestions for documents the CMA might use its powers to obtain, and witnesses it could contact. Additionally we encourage the CMA to conduct its own investigation of the issues mentioned in this submission, to ensure it is able to form a full, rounded and independent view of the Murdochs' track record.

Annex 1 - proposed evidence and witnesses

We welcome the CMA's Issues statement, which suggests that its analysis of its theory of harm 3 could include:

- The approach to effective corporate governance, including regulations on the treatment of employees;
- Comments, statements, and plans made by the acquiring media owner which give an indication as to its commitment to UK broadcasting standards post-transaction;
- The broader attitude within the relevant organisations towards regulatory compliance and to infringements that have taken place;
- The extent of efforts made to ensure compliance such as strategies in place, investment in training, seniority of staff responsible for compliance, the extent of Board involvement, actions taken following the remedying of any breaches.⁶⁵

We would encourage the CMA to extend that list to include:

- The record of settlements and payouts to victims with non-disclosure clauses
- Shareholder concerns about the way the companies are run
- The nature and number of official inquiries and investigations into MFT-controlled companies.

This annex signposts documents and witnesses which we believe will be helpful for the CMA to obtain or contact in this regard. We understand that the CMA has significant powers to obtain information from parties to a merger, so it can obtain a full picture.

Sexual and racial harassment scandals at Fox in the US

The CMA should ask 21C Fox for access to:

1. Details of the number and type of complaints that were escalated from individual Fox businesses to the full 21C F Board since 2012. This should include Fox Sport, Fox Business, Fox Films and other businesses beyond Fox News;
2. Minutes of 21C Fox Board meetings, especially ones where the Murdochs were personally present, that discussed corporate governance failures, especially after July 2016 when Roger Ailes' conduct was exposed publicly;
3. Terms of reference and findings of the July 2016 investigation into harassment and discrimination handled by Fox's law firm Paul, Weiss, Rifkind, Wharton and Garrison;

⁶⁵ Anticipated Acquisition by 21st Century Fox, Inc. of Sky PLC, Issues Statement, 10th October 2017, Competition and Markets Authority.

4. Structure of the new 2012 corporate governance mechanism - including which departments were covered by such a mechanism and if there were contingency plans for when senior staff were themselves involved in perpetrating or covering up failures;
5. Reports of any internal investigations that Fox may have launched into Bill O'Reilly's sexual harassment - since Fox has claimed that the evidence was "equivocal";
6. Full disclosure of all out of court settlements made to victims of harassment, discrimination and retaliation etc., including ones made personally by staff members;
7. Number and nature of any complaints that are currently in private arbitration, and;
8. Details of misconduct allegations and settlements in other Fox divisions, for example Fox Sports, Fox Business, and Fox Films.

In addition, the CMA could seek details from the following authorities on the nature and status of their inquiries:

1. the US Attorney's office in the Southern District of New York that is investigating secret harassment settlements made by Fox but not disclosed to shareholders
2. the New York State Division of Human Rights that has an ongoing investigation into the work culture at Fox News.

Witnesses that the CMA should consider contacting:

1. Douglas Wigdor - a lawyer who represents 23 current and former victims of Fox News suing the company for sexual and racial harassment and discrimination;
2. Victims of Fox News, some of whom are likely willing to speak off the record;
3. Brian Lewis - ex-PR manager at Fox who allegedly oversaw many of the smear campaigns against victims;
4. Mark Kranz - ex-CFO at Fox News who was allegedly aware of many of the secret settlements made by Fox News that are now being probed by federal investigators;
5. Dianne Brandi - Fox News top legal counsel who signed the Consent Decree in 2006 with the Equal Employment Opportunity Commission to stop discrimination and harassment at Fox News. Since early October 2017 Brandi has been on "voluntary leave" from Fox News.
6. Joe Lindsley, former Fox employee who worked closely with Roger Ailes and has written a forthcoming book about his experiences, including intimidation by Ailes.

News America Marketing: sabotaging the competition in direct marketing

The CMA should ask News Corp for access to:

1. Documents detailing settlements made by NAM;
2. Documents about any ongoing litigation or settlement negotiations, and;
3. The sworn testimony of Floorgraphics founder, the late George Rebh.

Witnesses that the CMA should consider inviting:

1. Antonia DeMatto - former vice president of Floorgraphics;
2. Richard Rebh - a co-founder of Floorgraphics;
3. Steve Marquis - former vice president for retail sales development at News America Marketing;
4. US Representative Rush Holt, Democrat from New Jersey - who raised this case with the US Attorney, and;
5. Gret Curtner - Valassis Communications lawyer.

NDS: hacking and sabotaging competitors in the set-top box industry

The CMA should request access to:

1. The court verdict of the Federal Southern California District court judgement from 2008 showing NDS Group Americas had violated the Federal Communications Act
2. Records from News Corp showing how and why it allegedly hired hackers.

Witnesses that the CMA should consider inviting:

1. Lee Gibling - the computer hacker allegedly hired by News Corp;
2. The BBC Panorama team Reporter Vivian White and producer Stephen Scott - who found incriminating emails;
3. Simon Dore - formerly Chief Technical Officer for ITV Digital; and
4. Ray Adams - former UK Security Chief at NDS.

News of the World and Sun hacking

The CMA should request access to:

1. Court complaints filed by victims of hacking at the Sun newspaper;
2. Official policies on email deletion at News Group Newspapers and Fox.

Witnesses that the CMA should consider inviting:

1. Mark Lewis - the Milly Dowler's family lawyer, who was also himself hacked;
2. Nick Davies - the investigative journalist who broke many of the hacking stories;
3. Christopher Hutchings - Hamblins LLP, the main lawyer representing nearly 91 victims of alleged hacking by the Sun newspaper;
4. Charlotte Harris - another phone hacking lawyer;
5. Mark Thomson - Atkins Thomson's lead lawyer dealing with email destruction;
6. Sue Akers - former hacking inquiry head at the Met police;
7. Peter Jukes - journalist who investigated the alleged subversion of the Daniel Morgan murder investigation by the Murdoch media.

Australian broadcasting: misleading regulators, breaking rules

The CMA should request access to:

1. Records held by the Australian Communications and Media Authority which speak to the Murdochs' history of breaching the media regulatory framework in Australia.
2. Documents relating to how Lachlan Murdoch breached radio station ownership rules in 2010, and whether he deliberately misled regulators then or before his unsuccessful attempt to take over Network Ten.

Witnesses that the CMA should consider inviting:

1. John Menadue, former Murdoch executive in Australia;
2. Mark Day, former Murdoch newspaper editor in Australia.
3. Timothy Dwyer, Associate Professor, Department of Media, University of Sydney;
4. David McKnight, Associate Professor, School of the Arts & Media, University of New South Wales, and;
5. Paul Barry, ABC Media Watch host.