

# Supplementary submission to the CMA on the proposed Fox/Sky merger

**Avaaz**

10th Nov 2017

To assist the CMA further with its Phase II assessment of the proposed Fox/Sky merger, Avaaz submits:

- A. **A comment on Sky's statement that the continuation of Sky News cannot be assumed if the merger does not proceed.** CMA guidelines indicate that this scenario should not be the basis for the CMA's assessment, unless Sky can show that this statement reflects an outcome that was likely before the merger was contemplated. Additionally, if the merger is permitted, based on this misleading counterfactual, the merged entity might well then restart Sky News, or a similar news channel in a way that is similar to *The Sun on Sunday* replacing the *News of the World*.
- B. **New evidence, and suggestions for CMA follow-up, on Fox News' lack of compliance with UK broadcasting standards.** Ofcom just found that Fox News failed to implement its own 15th May 2017 compliance policy, broadcasting a programme that breached impartiality standards on an issue of intense interest to the UK public and politicians on 25th May. This failure, just two weeks before a General Election and one month before Ofcom concluded its assessment of broadcast standards for the Sky bid, clearly indicates a lack of commitment to broadcasting standards.
- C. **Further analysis of the link between corporate misconduct and a genuine commitment to broadcasting standards.** Sexist, racist and Islamophobic content shown on Fox reflects staff attitudes and internal corporate governance failures. Fox's corporate attitudes and governance standards would be likely to affect Sky's after the merger, and mean that the company is likely to continue broadcasting material which breaches the broadcasting code.

## **A: The threat to close Sky News**

In our oral hearing at the CMA, we were asked about the commercial logic that might dictate closing Sky News to make it easier to secure regulatory clearance for the 21C Fox/Sky merger, as the public interest tests set out in UK law focus on news and current affairs programming. Subsequently Sky's submission to the CMA in response to the CMA's Issues Paper has been published, indicating a potential willingness to sacrifice Sky News if the merger does not proceed. Sky's new statement should not change the CMA's approach.

Sky's statement contains the following:

"The CMA should not in its assessment simply assume the "continued provision of Sky News" and its current contribution to plurality, "absent the Transaction". Sky would likely be prompted to review the position in the event that the continued provision of Sky News in its current form unduly impeded merger and/or other corporate opportunities available in relation to Sky's broader business, such as the Transaction".<sup>1</sup>

Unless the parties can show that Sky News' closure was already considered a likely outcome before the merger was launched in December 2016, the possible closure of Sky News should not be accepted as an appropriate counterfactual to the merger.

The CMA should follow the logic of its Merger Assessment Guidelines, which say that, to consider any "exiting firm argument," evidence should be sought that "has not been prepared in contemplation of the merger."<sup>2</sup> To accept such an argument, the CMA would need to "believe that it was inevitable that the firm would exit the market."<sup>3</sup>

Additionally, there would be nothing to stop the merged entity restarting Sky News, or a similar news channel, months after it secured the merger. This would be similar to the closure of *News of The World* at the height of the phone hacking scandal, then its relaunch with a new name - *The Sun on Sunday*. It would also be in line with the pattern shown in our previous evidence of Murdoch-owned companies making commitments at the time of mergers only to break them soon after securing control of the new company.<sup>4</sup>

The CMA should consider commissioning independent analysis of the value to Sky of Sky News, including through brand recognition with the public and politicians, and independent research on the views of Sky shareholders who held stakes before Fox's bid was announced.

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<sup>1</sup> SKY'S RESPONSE TO THE CMA'S ISSUES STATEMENT, October 2017, p.2. Available at: <https://assets.publishing.service.gov.uk/media/5a008203e5274a6c8f206ae2/sky-resp-to-fox-sky-issues-statement.pdf>

<sup>2</sup> Section 4.3.9 "Merger Assessment Guidelines," CC2 Revised, Competition Commission and the Office of Fair Trading, September 2010, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284449/OFT1254.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284449/OFT1254.pdf)

<sup>3</sup> *ibid*

<sup>4</sup> See *Defiance, not compliance: the culture and behaviour of Murdoch- owned companies*, Avaaz submission to the CMA, October 2017. Available at: <https://www.gov.uk/cma-cases/twenty-first-century-fox-sky-merger-european-intervention-notice>. See also submission of Ed Miliband, Sir Vince Cable, Kenneth Clarke and Lord Falconer to CMA on plurality and broadcasting standards issues raised by proposed acquisition by 21st Century Fox of Sky plc, at: <https://assets.publishing.service.gov.uk/media/5a0084c840f0b65b8ab0ae15/miliband-clarke-cable-falco-ner-resp-to-fox-sky-issues-statement.pdf>.

## ***B: The significance of Ofcom's 6th November Fox News breach findings***

On 6 November, Ofcom found two Fox News programmes in breach of the Broadcasting Code's due impartiality standards.<sup>5</sup> The programmes were:

- a January 2017 Hannity segment about President Trump's executive order restricting travel from majority-Muslim countries, and
- a May 2017 Tucker Carlson piece on the Manchester Arena terror attack.<sup>6</sup>

These decisions provide further evidence of an ongoing lack of commitment to broadcast standards and fresh insight into the issues raised in Avaaz's Fox News, Broadcasting non-compliance briefing submitted to the CMA in October. That briefing pointed to Fox News' "lack of accommodation to UK regulation and its assumption that the rules are not relevant to them".<sup>7</sup>

Ofcom's new finding explains that Hannity's January show "dealt with major matters relating to current public policy that, as well as being of international significance, were of particular relevance and significance to UK viewers". It found the programme's coverage of President Trump's executive order one-sided, and concluded that Fox News was in breach of three Broadcasting Code rules:

- 5.9 (adequate representation of alternative views in 'personal view' or discussion programmes);
- 5.11 (due impartiality on matters of major political and industrial controversy and major matters relating to current public policy), and;
- 5.12 (inclusion of an appropriately wide range of significant views when dealing with matters of major political and industrial controversy and major matters relating to current public policy).

Ofcom also assessed a second programme - Tucker Carlson Tonight - which aired a segment on 25th May about the Manchester Arena bombing. As with its analysis of Hannity, Ofcom concluded that audience expectations based on Fox News being a US channel are not a sufficient defence to justify impartiality failings on a matter of significance to UK viewers, and found Hannity in breach of the same three impartiality code rules as Hannity. Ofcom gave brief details of the breaching material as follows:

"The programme included highly critical statements about: Theresa May; the Deputy Mayor of Manchester, Baroness Hughes; the Chief Constable of Greater Manchester, Ian Hopkins; the UK Government; and the UK authorities, including accusations that particular individuals and public bodies had done nothing to: counter terrorism; stop radicalisation; protect citizens from terrorism; or protect "thousands of underage girls" from rape and abuse. Further, about public leaders: that their inaction was motivated by political correctness; they valued how people saw them over the lives of children; and they were forcing an "official lie" on citizens, which was "totalitarian" and "wicked".

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<sup>5</sup> "OFCOM BROADCAST AND ON DEMAND BULLETIN," Ofcom, Issue number 341, 6 November 2017, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf)

<sup>6</sup> *ibid*

<sup>7</sup> Fox News: broadcasting non-compliance, Avaaz submission to the CMA, October 2017. At: <https://assets.publishing.service.gov.uk/media/5a02fabee5274a0ee5a1f158/avaaz-broadcast-standards-resp-to-fox-sky-issues-statement.pdf>.

In finding this programme in breach of three points of the Broadcasting Code that govern impartiality, Ofcom argued:

“There was no reflection of the views of the UK Government or any of the authorities or people criticised, which we would have expected given the nature and amount of criticism of them in the programme. The presenter did not challenge the views of his contributors, instead, he reinforced their views”.<sup>8</sup>

Ofcom only provided its analysis of these breaches in a short form, arguing that this is appropriate as Fox News no longer broadcasts in the UK. Even these brief details show the attempt to promote a biased view of UK politics, but there is no analysis of the degree of the breach, not Fox’s News’ stance regarding Ofcom’s investigation. Third parties and the CMA therefore cannot know whether or not Fox News accepted the finding, made any mitigating argument other than the context of its US audience, or if they indicated they would take measures to avoid future breaches.

Crucially, we do not know whether Fox News made any comment on how it sought to apply its 15th May broadcast compliance policy in preparing its Tucker Carlson programme which aired on 25th May. If Fox News did not take steps to implement that policy in reporting on a major, sensitive UK story just two weeks before a General Election and one month before Ofcom concluded its Public Interest test for the Sky bid, this raises very serious doubts about that policy and about Fox’s intention to commit to UK broadcasting standards.

Given that Fox is currently subject to a Phase II merger review, a full form Ofcom review would have been more appropriate to give the CMA more detailed evidence on the programme’s content, Fox News’ response to Ofcom’s investigation, and Ofcom’s views on the adequacy of that response. This further evidence is crucial to the CMA’s enquiry. Whilst we understand that a regulator has to ensure its regulatory enforcement action is proportionate, and that following through on the time consuming sanctions process may have felt non-productive once the channel had withdrawn from UK licenced broadcast, the CMA is duty bound to consider whether the ongoing nature of the non compliance, and Fox’s poor defence of its actions, should warrant the same kind of examination as Ofcom would normally give in the light of repeated egregious actions.

For example Times Now, a conservative-leaning broadcaster from India which broadcasts to the UK, responded very differently when Ofcom found the broadcaster in significant breach of the rules concerning due impartiality.<sup>9</sup> After the breach finding regarding The Newshour, the broadcaster acknowledged its fault and described the actions it would take to avoid similar breaches in future. Ofcom noted that when considering its response, stating that “in reaching our Decision, we took into account that the Licensee told us that the presenter “...is no longer associated with the channel and has moved out of the organization”. Times Global also said that Mr Goswami’s replacement had “a very different approach” and had been “bringing in a wide range of reactions and comments from the participants on the show, while ensuring that no personal views” are included in the programmes. In addition, Times Global told Ofcom it

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<sup>8</sup> “OFCOM BROADCAST AND ON DEMAND BULLETIN,” Ofcom, Issue number 341, 6 November 2017, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf)

<sup>9</sup> Ofcom Broadcast and On Demand Bulletin, various dates, August and September 2016.

had “conducted extensive discussions with the current team, specifically drawing attention to Ofcom Rules and Guidance” and taken steps to “conduct training programmes” for its news teams.<sup>10</sup>

By contrast, in all of the decisions we have asked the CMA to consider, Fox News have offered no concrete actions, and initiated no disciplinary proceedings in relation to any of the staff whose contributions breached the rules, showing no serious commitment to making its current approach compatible with British broadcasting standards.

We encourage the CMA to ask Ofcom for further information about how these breaches shed light on Fox’s commitment to compliance with UK standards. In particular, we suggest asking:

1. Will Ofcom provide the CMA Fox News’ responses to the January and May breaches.
2. Did Ofcom assess the 25th May Tucker Carlson programme in the light of Fox News’ 15th May broadcast compliance policy in either its 29th June 2017 Public Interest Test report, or in its 6th November 2017 Breaches Bulletin?
3. Did Ofcom monitor and assess any other Hannity or Tucker Carlson programmes as part of its 2017 UK General Election monitoring, and if so what did it find?
4. Did Ofcom review any of the Hannity or Tucker Carlson, or other Fox News items mentioned in Annex 1 of its 25th August letter to the Secretary of State, on the basis of the impartiality rules in the Broadcast Code, as well as the accuracy ones?
5. Given the pattern of the Fox News breaches outlined in this submission and our previous submission, we encourage the CMA to ask Ofcom whether Ofcom would have been minded to sanction the channel after these Hannity and Carlson breaches, if Fox News had still been broadcasting in the UK at the time of Ofcom’s adjudication.

### ***C. The links between misconduct, attitudes to corporate governance and broadcasting standards***

The CMA plans to examine “the broader attitude within the relevant organisations towards regulatory compliance and to infringements that have taken place”<sup>11</sup> and says it “will need to assess the extent to which the record of compliance in one field of regulation can read across into another.”<sup>12</sup> 21st Century Fox asserts that the relevance of such evidence is at best only “indirect,”<sup>13</sup> but we submit that corporate malfeasance at MFT companies is directly linked to the Murdochs’ genuine commitment to broadcasting standards, and that this link is critical to

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<sup>10</sup> Ofcom Broadcast and On Demand Bulletin, Issue Number 327, 24 April 2017, pg 39  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0013/101227/Issue-327-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0013/101227/Issue-327-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

<sup>11</sup> Paragraph 54 of CMA Issues Statement.

<sup>12</sup> Paragraph 55 of CMA Issues Statement.

<sup>13</sup> 21st Century Fox’s Supplementary Submission to the CMA, dated 24 October 2017, paragraphs 1.5 and 3.2.

understanding 21CF and the Murdochs' commitment to "the spirit as well as the letter of the broadcasting standards."<sup>14</sup>

We therefore urge the CMA to assess the following evidence which links current attitudes and behaviour at 21C Fox to an identifiable risk to Sky's procedures, broadcast standards compliance and the UK public interest.

## 1. Off screen misconduct reveals an internal corporate culture that is also reflected in what viewers see and hear on screen

Fox News bred an internal culture in which sexism and racism flourished. These attitudes and discriminatory culture then permeated Fox News' on screen content. The following examples reveal the link between off screen culture and on screen behaviour that is visible and audible to viewers.

### Attitudes to women

- *On-air harassment* of Fox News female talent.
  - Gretchen Carlson once walked off the set of Fox and Friends as a result of in studio harassment by a male colleague.<sup>15</sup>
  - Bill O'Reilly harassed Lis Wiehl, the woman he settled with for \$32 million this January, on his radio show.<sup>16</sup> For example "Lis. You know that. You're here -- you're here because you're eye candy. That's why you're here." After Wiehl responded, "What? This is radio." O'Reilly replied, "I know. But -- for me." O'Reilly added, "I don't care about the people listening. You're here because you're good-looking, so I got somebody to look over" while broadcasting. Later, O'Reilly pretended to confuse Wiehl with actress Drew Barrymore, remarking, "I loved you in *Poison Ivy*. Was that the one [movie] she was naked in?"<sup>17</sup>
- *On-air sexism*. Below are examples from Fox News. At least two of these anchors - Eric Bolling and Bill O'Reilly - have sexually harassed women.
  - Anchor Bill O'Reilly's question to his female panelists "There's got to be some downside to having a woman president, something?"
  - Fox and Friends anchor: "Women are everywhere, we're letting them play golf and tennis now, it's outta control."

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<sup>14</sup> Guidance from (then) Department of Trade and Industry (DTI) on public interest intervention in media mergers, para 7.22.

<sup>15</sup> Gretchen Carlson walks off the set of Fox and Friends [https://www.youtube.com/watch?v=z\\_vqfRvcjrs](https://www.youtube.com/watch?v=z_vqfRvcjrs)

<sup>16</sup> 'Bill O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract' (*The New York Times*, 21 October 2017), available at:

[www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html](http://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html).

<sup>17</sup> The worst of Bill O'Reilly's on-air denigration and harassment of Lis Wiehl -

<https://www.mediamatters.org/research/2017/10/23/The-worst-of-Bill-OReillys-on-air-denigration-and-harassment-of-Lis-Wiehl/218301>.

- Fox and Friends anchor to his female co-host, “Didn’t men give you the kitchen?”
- Eric Bolling, “Would that be considered Boobs on the ground or no?”
- Anchor Geraldo Rivera: “To be taken seriously you can’t wear skin tight jeans.”
- Tucker Carlson, “Are female breadwinners a recipe for disharmony within the home?”<sup>18</sup>
- *Dress code* - Official policies required women to only wear skirts on air,<sup>19</sup> and sit behind glass tables that provided a low-angle leg shot.<sup>20</sup>

To find out more about the link between off screen attitudes and on screen sexual harassment, we recommend the CMA speak to Lis Wiehl, Gretchen Carlson and former Fox News media commentator Jane Hall.<sup>21</sup>

### Xenophobia and racism

- *Islamophobia* - Fox News CEO Roger Ailes’ own Islamophobic views are well-documented.<sup>22</sup> During a lunch meeting with Bill Clinton and News Corp. executives, Ailes reportedly said of plans to reconstruct the World Trade Center, “We should fill the last ten floors with Muslims so they never do it again”<sup>23</sup>. He also complained to neighbours that Obama refused to call Muslims “terrorists.”<sup>24</sup> After 9/11, he was so paranoid about terrorist attacks that after one of Fox News’ Muslim staff members, Musfiq Rahman, walked into his office, he immediately requested a wall be constructed in his office.<sup>25</sup> A source close to Ailes recalled, “He has a personal paranoia about people who are Muslim - which is consistent with the ideology of his network.”<sup>26</sup>
- Long-time former make-up artist, Lena Jemmott, filed a complaint in 2016 alleging that she was subject to race and religious discrimination because she is black and a Muslim. She claims Fox News fired her and labelled her a “ticking time bomb” who was “mentally unstable”.<sup>27</sup>

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<sup>18</sup> Several clips of on-air misogyny and sexual harassment can be seen at:

<https://www.youtube.com/watch?v=DEoWSaM61NI>.

<sup>19</sup> The View host reveals the strict dress code at Fox News while Roger Ailes was in charge [www.dailymail.co.uk/news/article-4382664/Jedediah-Bila-reveals-strict-dress-code-Fox-News.html](http://www.dailymail.co.uk/news/article-4382664/Jedediah-Bila-reveals-strict-dress-code-Fox-News.html) .

<sup>20</sup> Allegations reveal how Roger Ailes ran Fox News by projecting power <https://www.npr.org/2016/09/02/492443262/allegations-reveal-how-roger-ailes-ran-fox-news-by-projecting-power>.

<sup>21</sup> Jane Hall: <https://twitter.com/janehallau?lang=en>

<sup>22</sup> Fox CEO Roger Ailes has a long history of bigotry, sexism and homophobia <https://www.mediamatters.org/research/2016/07/20/soon-be-former-fox-ceo-roger-ailes-has-long-history-bigotry-sexism-and-homophobia/211725#minority>.

<sup>23</sup> Ibid, referencing *The Loudest Voice in the Room*, pg 264-265.

<sup>24</sup> Ibid, referencing *The Loudest Voice in the Room*, pg xiv.

<sup>25</sup> <https://assets.documentcloud.org/documents/3678103/Fox-News-Racial-Discrimination-Lawsuit.pdf>

<sup>26</sup> Fox News’ war on Muslims [https://www.salon.com/2012/09/11/fox\\_news\\_war\\_on\\_muslims/](https://www.salon.com/2012/09/11/fox_news_war_on_muslims/).

<sup>27</sup> Rachel Stockman, “Mediator Assigned After Makeup Artists at Fox News Claim They Were Made to Watch Sexual Video,” 8 September 2016, <https://lawnewz.com/uncategorized/judge-appoints-mediator-after-fox-news-makeup-artists-claim-they-were-made-to-watch-sexual-video/>

- The deliberate and often subtle choice of language and stories on Fox News to paint all Muslims as dangerous fifth columnists has been well-documented. For instance, Fox News deployed the deliberate use of Barack Obama’s Muslim middle name “Hussein” which reinforced the conspiracy in viewers’ minds that he was a Muslim they needed to fear - see Annex 1.<sup>28</sup>
- Such Islamophobia also spills over in how stories are covered, as shown in Ofcom’s recent breach decisions against Fox News coverage of President Trump’s ‘Muslim ban’ and the Manchester terror attack.<sup>29</sup>
- Fox News recent hires also reveal its promotion of Islamophobia. Laura Ingraham joined Fox as a presenter in September 2017 after a history of racist, Islamophobic and anti-minority statements,<sup>30</sup> and Sebastian Gorka is serving in a news capacity after a long history of extremism, including having been previously fired by the Federal Bureau of Investigation for “over-the-top Islamophobic rhetoric.”<sup>31</sup>
- *Racism* - In a class action against Fox News, several employees allege a hostile work environment towards racial minorities replete with “racially derogatory comments.”<sup>32</sup> One of these employees includes Emmy-award winning Fox news anchor Kelly Wright, who alleges he was effectively sidelined and his career stunted because he was black and tried to show blacks in “too positive” a light.<sup>33</sup> Other allegations concern a pay gap for minority employees, and requiring minority employees to get “escorts” when they needed to speak to senior colleagues on the second floor.<sup>34</sup> Tellingly, the complaint describes the culture of Fox News as “Plantation-style management,” not a “modern day work environment.”<sup>35</sup> Ofcom found these racial harassment allegations “disturbing”.<sup>36</sup>
- This treatment of African-American employees spills over into Fox News on screen. Academic research, attached in Annex 2, analysed Fox coverage of police brutality against black and other minority groups in the US between

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<sup>28</sup> Ibid. The UK broadcasting code requires that “there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.”

<sup>29</sup> “OFCOM BROADCAST AND ON DEMAND BULLETIN,” Ofcom, Issue number 341, 6 November 2017,

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf)

<sup>30</sup> Laura Ingraham’s racist, transphobic take lands her a primetime slot on Fox News

<https://thinkprogress.org/ingraham-fox-3f9bd36a08f4/>

<sup>31</sup> Spencer Ackerman, “FBI Fired Sebastian Gorka for Anti-Muslim Diatribes,” *The Daily Beast*, 21 June 2017, <https://www.thedailybeast.com/fbi-fired-sebastian-gorka-for-anti-muslim-diatribes>. Further clips of Islamophobic comments on Fox News are at: [www.youtube.com/watch?v=qVl3QrVVc0o](http://www.youtube.com/watch?v=qVl3QrVVc0o).

<sup>32</sup> Niraj Chokshi. ‘2 Black Women Sue Fox News, Claiming Racial Discrimination’. *New York Times*, 28 March 2017,

[www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?\\_r=0](http://www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?_r=0);  
[https://www.washingtonpost.com/news/morning-mix/wp/2017/04/26/more-lawsuits-aimed-at-fox-news-this-time-for-race-discrimination/?utm\\_term=.f73b523f9459](https://www.washingtonpost.com/news/morning-mix/wp/2017/04/26/more-lawsuits-aimed-at-fox-news-this-time-for-race-discrimination/?utm_term=.f73b523f9459);

<https://assets.documentcloud.org/documents/3678103/Fox-News-Racial-Discrimination-Lawsuit.pdf>

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> 29 June 2017 Fit and proper report - Ofcom

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0013/103621/decision-fit-proper.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0013/103621/decision-fit-proper.pdf)

August 2014 and March 2015.<sup>37</sup> The research paper found that Fox News portrayed these issues within five broader themes:

- blaming black victims;
- blaming the black community;
- blaming black leaders;
- attacking black protesters and their demands, and;
- discrediting attempts to address racism by referring to them as “politics of racial division.”<sup>38</sup>

### Conservative narratives

- The manipulation of the news presented as “fair and balanced” is subtle and systematic. In an interview to the Hartford Courant, CEO Roger Ailes said, “If you come out and you try to do right-wing news, you’re gonna die. You can’t get away with it.”<sup>39</sup> As Ailes’ biographer Gabriel Sherman writes, “The conservative dream of establishing a counter-media hinged, in large part, on convincing the viewers that what they were getting was *news*, not propaganda. “Fair and balanced” was a commercial necessity.”<sup>40</sup> In Annex 3. Bruce Bartlett, an American economist and historian who has worked in several Republican administrations, provides a detailed analysis of “*How Fox News changed American media and political dynamics.*”
- Since our 27 October hearing, there have been further clear examples.
  - Fox News’s aggressive leveraging of the widely debunked story about blaming Hillary Clinton for collusion with Russia<sup>41</sup> resulted in immediate political attention and action from President Trump<sup>42</sup> and Congress<sup>43</sup>, and;
  - Fox News and several other Murdoch-owned outlets called for the resignation of special counsel Robert Mueller, who is overseeing the investigation into Trump-Russia collusion.<sup>44</sup>

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<sup>37</sup> Colleen Mills, “Framing Ferguson: Fox News and the Construction of U.S. Racism,” *Race & Class* Vol. 58(4): 39-56 (2017).

<sup>38</sup> “Framing Ferguson: Fox News and the construction of US racism” by Colleen E. Mills published in *Race&Class* Vol.58(4): 39-56. See also <http://nymag.com/daily/intelligencer/2017/04/some-of-the-most-racist-moments-in-fox-news-history.html>.

<sup>39</sup> *Ibid*, referencing *The Loudest Voice in the Room*, pg. 241.

<sup>40</sup> *Ibid*.

<sup>41</sup> “How Steve Bannon and Sean Hannity’s ginned-up Hillary Clinton uranium story became a congressional investigation,” *Media Matters for America*, 24 October 2017, <https://www.mediamatters.org/blog/2017/10/24/how-steve-bannon-and-sean-hannitys-ginned-hillary-clint-on-uranium-story-became-congressional/218318>.

<sup>42</sup> “How Trump helps *Fox & Friends* set the media agenda,” *Media Matters for America*, 19 October 2017,

<https://www.mediamatters.org/blog/2017/10/19/how-trump-helps-fox-friends-set-media-agenda/218266>

<sup>43</sup> Tierney Sneed, “Nunes Announces Probe With Gowdy Into Obama-Era Russian Uranium Deal,” *Talk Points Memo*, 24 October 2017,

<http://talkingpointsmemo.com/muckraker/nunes-gowdy-uranium-russia-probe>.

<sup>44</sup> Jason Schwartz, “Murdoch-owned outlets bash Mueller, seemingly in unison,” *Politico*, 30 October 2017, <https://www.politico.com/story/2017/10/30/murdoch-fox-mueller-trump-244333>.

## 2. Murdoch-owned companies exhibit a top-down corporate culture that deprioritises regulatory and ethical compliance

Many Murdoch-owned companies have shown a focus on commercial gain and political influence while issuing paper policies that do not result in actual compliance, and exhibiting a lack of transparency with external authorities. If Fox is permitted to fully take over Sky, the same pattern is likely to play out in complying with UK broadcasting standards.<sup>45</sup>

### Paper policies

- Recent testimony to the CMA revealed that Bill O'Reilly's contract had a "shield clause" that made it impossible for Fox to fire him over sexual harassment "unless that allegation was proven in court."<sup>46</sup> This clause made a mockery of the 2012 compliance policy which is at the centre of Fox's submissions to the CMA and other UK authorities on corporate governance. As other Fox employees are bound by forced arbitration clauses which require them to settle privately, it would have been impossible for most of them to have their day in court and prove allegations to the level which could get O'Reilly fired. For instance, the anchor Gretchen Carlson had a contract which stated that "all filings, evidence and testimony connected with the arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence."<sup>47</sup> We urge the CMA to inquire whether any other executives in Fox News or any other Fox divisions have or had such shield clauses.
- Fox News produced a broadcasting compliance policy on 15th May 2017, but the policy did not result in a clear change to Fox News's approach to broadcasting or its output, as the recent Ofcom findings on the Tucker Carlson program show.<sup>48</sup>
- Policies at the News of the World failed to prevent repeated breaches of ethical and legal norms, leading to the eventual closure of the paper after the phone hacking scandal. Rewarding or re-hiring staff, and widespread bullying, reveal a toxic culture, and the recent settlements and ongoing court case about alleged hacking by The Sun indicate that this may have been present there as well.<sup>49</sup>

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<sup>45</sup> See Defiance, not compliance: the culture and behaviour of Murdoch- owned companies, Avaaz submission to the CMA, October 2017. Available at:

<https://www.gov.uk/cma-cases/twenty-first-century-fox-sky-merger-european-intervention-notice>.

<sup>46</sup> Summary of hearing with Jacques Nasser, Independent Director of 21C Fox, 25 October 2017. Para 24.

<https://assets.publishing.service.gov.uk/media/5a02f9ebe5274a0ee28af81d/summary-of-hearing-with-jacques-nasser.pdf>

<sup>47</sup> The Problem of Sexual Harassment and Forced Arbitration

<https://www.correiaputh.com/news/problem-sexual-harassment-forced-arbitration/>

<sup>48</sup> OFCOM BROADCAST AND ON DEMAND BULLETIN," Ofcom, Issue number 341, 6 November 2017, [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/107569/issue-341-broadcast-on-demand-bulletin.pdf)

<sup>49</sup> The Sun to face trial over phone-hacking claims, The Guardian

<https://www.theguardian.com/media/2016/apr/28/sun-trial-phone-hacking-damages-les-dennis>.

## Lack of transparency

- Fox has so far failed to release any findings of its 2016-17 internal investigation into sexual harassment carried out by its law firm Paul, Weiss to either staff or shareholders.
- Mr. Nasser's testimony to the CMA states that the evidence against Bill O'Reilly was "uncertain".<sup>50</sup> This is implausible, as one of the victims Andrea Mackris had phone recordings of Bill O'Reilly's sexual harassment which was widely reported back in 2004.<sup>51</sup> The CMA could contact the lawyers who represented her in the case to obtain more details of the evidence which led to the 2004 settlement, and additionally contact lawyers involved in Bill O'Reilly's other settlements.<sup>52</sup>
- The Murdochs are also alleged to have concealed harassment settlements from shareholders, and were condemned by UK law enforcement officials and Members of Parliament for failing to cooperate properly with their investigations into phone hacking.<sup>53</sup>
- Unlike the policies of major UK broadcasters, Fox News's new broadcasting compliance policy of 15 May has not been published and Fox News has declined to share it with Avaaz.

## Conclusion

This short supplementary note adds evidence to that previously submitted by Avaaz to the DCMS, Ofcom, and the CMA since 8th March 2017. The combined evidence, and that submitted by other organisations and individuals, makes clear the nature and degree of the threat to the UK public interest if the merger is allowed to proceed.

## Annexes (submitted as separate attachments)

1. "Fox News' war on Muslims", Nathan Lean, excerpt from *"The Islamophobia Industry: How the Right Manufactures Fear of Muslims"*, Salon.com, 2012.
2. "Framing Ferguson: Fox News and the Construction of U.S. Racism", Colleen E. Mills, *Race and Class*, Institute of Race Relations, Vol. 58(4): 39–56, 2017.
3. "How Fox News Changed American Media and Political Dynamics", Bruce Bartlett, The Big Picture, May 2015.

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<sup>50</sup> Summary of hearing with Jacques Nasser, Independent Director of 21st Century Fox on 25th October 2017. Para 24

<https://assets.publishing.service.gov.uk/media/5a02f9ebe5274a0ee28af81d/summary-of-hearing-with-jacques-nasser.pdf>

<sup>51</sup> Choking, Harassing and Loofahs: Women's Allegations against Bill O'Reilly Piled up for Years before his demise, The Daily Beast

<https://www.thedailybeast.com/choking-harassing-and-loofahs-womens-allegations-against-bill-oreilly-piled-up-for-years-before-his-demise>.

<sup>52</sup> Lawyer for Andrea Mackris, Benedict Morelli of the Morelli Law firm - <http://www.morellilaw.com/>.

<sup>53</sup> News Corp. hindering investigation

<https://www.politico.com/story/2011/07/news-corp-hindering-investigation-059437>.