

# Combating Fake News and Censorship in the Digital Age: How the United Kingdom Serves as a Model for Future Regulatory Intervention in Multimedia M&A Deals

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## Introduction

While being interviewed in September 2018, Jeff Bezos, Founder and CEO of Amazon, discussed the interplay between corporations' desire to expand and governments' efforts to stifle growth in order to foster competi-

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tion.<sup>1</sup> Despite heading one of the largest and most valuable companies in the world, he conceded, “[a]ll big institutions of any kind will be and should be scrutinized . . . . It’s not personal. It’s kind of what we want to have as a society happen.”<sup>2</sup>

Bezos’s words were redolent with irony. Just thirteen months before he made this statement, his company completed yet another megadeal, acquiring Whole Foods, a brick-and-mortar supermarket chain to complement the online retailer’s already colossal presence.<sup>3</sup> Despite the size of this transaction, it raised little to no inquiry from the United States Federal Trade Commission.<sup>4</sup> Yet the result was far from surprising. Indeed, the deal was emblematic of the current state of affairs regarding M&A throughout the world. The past several years in the United States, for instance, have witnessed the closing of massive deals, particularly in the realm of multimedia, punctuated by Disney’s acquisition of Twenty-First Century Fox for \$71.3 billion.<sup>5</sup> AT&T’s gigantic merger with Time Warner, which recently received unanimous approval from the D.C. Circuit, provides critical precedent which should open the floodgates for future deals of similar immense size to take place.<sup>6</sup>

These megadeals are not limited to America, however. In fact, an even greater amount of tumult can be seen across the other side of the Atlantic. Europe has undergone a surge of large mergers and acquisitions. Within the first six months of 2018, European M&A generated some \$767 billion, up ninety-six percent from the first half of 2017.<sup>7</sup> Interestingly enough, despite the enormous year-to-year increase concerning the value of these transactions, the actual *number* of transactions was down eighteen percent,

1. See Laura Stevens, *Amazon’s Jeff Bezos: Big Businesses Should Be Scrutinized, Not Vilified*, WALL ST. J. (Sept. 14, 2018, 12:32 AM), <https://www.wsj.com/articles/amazon-jeff-bezos-big-businesses-should-be-scrutinized-but-not-vilified-1536897242> [<https://perma.cc/56TC-A4PM>].

2. *Id.*

3. See Lauren Thomas, *Amazon says Whole Foods deal will close Monday, with discounts to begin then*, CNBC (Aug. 24, 2017, 3:01 PM), <https://www.cnbc.com/2017/08/24/amazon-says-whole-foods-deal-will-close-monday-prime-customers-to-immediately-get-discounts.html> [<https://perma.cc/2W4A-QWUK>].

4. See Abha Bhattarai, *FTC clears Amazon.com purchase of Whole Foods*, WASH. POST (Aug. 23, 2017, 4:56 PM), [https://www.washingtonpost.com/news/business/wp/2017/08/23/ftc-clears-amazon-com-purchase-of-whole-foods/?utm\\_term=.9dc9c194df05](https://www.washingtonpost.com/news/business/wp/2017/08/23/ftc-clears-amazon-com-purchase-of-whole-foods/?utm_term=.9dc9c194df05) [<https://perma.cc/W9LS-CRW9>].

5. See *Disney’s bid for 21st Century Fox approved by Department of Justice*, CBS NEWS (June 27, 2018, 2:51 PM), <https://www.cbsnews.com/news/disneys-bid-for-21st-century-fox-approved-by-department-of-justice/> [<https://perma.cc/4SE6-QE5A>].

6. The United States Department of Justice has said they will not seek an appeal. See Edmund Lee & Cecilia Kang, *U.S. Loses Appeal Seeking to Block AT&T-Time Warner Merger*, N.Y. TIMES (Feb. 26, 2019), <https://www.nytimes.com/2019/02/26/business/media/att-time-warner-appeal.html> [<https://perma.cc/D6GX-SG6H>]; Sara Salinas, *AT&T’s merger with Time Warner will stand, after DOJ loses its appeal and drops the case*, CNBC (Feb. 26, 2019, 4:24 PM), <https://www.cnbc.com/2019/02/26/appeals-court-upholds-decision-allowing-att-to-buy-time-warner.html> [<https://perma.cc/ERS9-R2Q4>].

7. Ben Martin, *Return of mega-deals helps European M&A double*, REUTERS (June 28, 2018, 7:14 PM), <https://www.reuters.com/article/us-m-a-europe/return-of-mega-deals-helps-european-ma-double-idUSKBN1JO3DN> [<https://perma.cc/K5U6-ZAAG>].

to 6,201, the lowest figure since 2005.<sup>8</sup> This development cannot be underscored enough—even though the monetary value of these transactions is *increasing*, the number of M&A deals in Europe is actually *decreasing*, signaling that the largest companies are taking up more of the allotted pie.<sup>9</sup> The gap between the haves and the have-nots only seems to be widening further.

With such a large amount of top-heavy consolidation occurring, age-old antitrust worries that certain corporations will have too much sway within the market will naturally emerge.<sup>10</sup> These concerns are intensified when multimedia corporations, defined here as the distributors of entertainment and news content, are held in the hands of only a few. In these scenarios, it is far more likely that the messages that are promulgated to the public are uniform and edited to comply with the underlying goals, political or otherwise, that these businesses and their owners desire, while messages that run counter to these hidden agendas are left out entirely.<sup>11</sup>

The current situation in the United Kingdom showcases the problem that occurs when media outlets are overly consolidated. As an example, as of April 2019, the top four television networks and their secondary channels in the UK comprise over seventy percent of total average viewership.<sup>12</sup> The corporation Sky has channels which combine for roughly one-tenth of total average viewership.<sup>13</sup> A single company's ability to have that large a percentage of the population regularly affixed to their channels or platforms leaves open the possibility that it will abuse its influence among the populace in one form or another.<sup>14</sup>

This Note examines how countries should balance the delicate issue of promoting mergers and allowing business owners to make their own decisions while simultaneously preventing any corporation from cornering too large a portion of any multimedia market. While in the past the general

8. *Id.*

9. *See id.*

10. See Cristiano Lima, *House antitrust chair suggests halting major tech mergers until federal probes wrap*, POLITICO (Nov. 13, 2019, 5:57 PM), <https://www.politico.com/news/2019/11/13/house-antitrust-chair-suggests-halting-major-tech-mergers-until-federal-probes-wrap-070818> [<https://perma.cc/KJP4-6FUA>].

11. See Jacques Derenne et al., *10 EU Competition & Regulatory Trends to Watch for in 2018*, ANTITRUST L. BLOG (Jan. 23, 2018), <https://www.antitrustlawblog.com/2018/01/articles/eu-competition-regulator/competition-regulatory-trends/> [<https://perma.cc/GR2K-NJW8>]. *See also infra* note 58.

12. *See Monthly viewing by channel group*, BARB, <https://www.barb.co.uk/viewing-data/monthly-viewing-by-channel-group/> [<https://perma.cc/VSD6-N9NE>] (last visited May 11, 2019) (from the dropdown menu select “Apr 2019”).

13. *See id.* BBC1, run by the British Broadcasting Corporation (BBC), is the most watched channel, accounting for over one-fifth of total average viewership. That being said, the BBC is publicly owned, which should lessen some fears of impartiality, since the network does not have to answer to a controlling shareholder. See James Heath, *Why the licence fee is the best way to fund the BBC*, BBC (July 14, 2014, 3:03 PM), <https://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4> [<https://perma.cc/MK5L-NY68>].

14. *See Fake news a democratic crisis for UK, MPs warn*, BBC NEWS (July 28, 2018), <https://www.bbc.com/news/technology-44967650> [<https://perma.cc/TUY5-TH5K>].

public was concerned that their respective governments would suppress the freedom of the press, they now face the reality that corporations likewise engage in censorship activities. The sheer size of the top multimedia corporations today, compounded with unprecedented technological abilities to target each consumer individually, mean their influence upon their audiences has never been stronger. M&A deals this decade have only increased corporations' sway among the populace. This Note argues that in order to thwart multimedia companies from selectively promulgating self-serving propaganda and censoring stories that run contrary to their agendas, the general public should turn to their governments' regulatory agencies to restrict the amount of leverage these companies can attain, in the hopes that freedom of the press and unadulterated news can be available once more.

Specifically, this Note proposes that while governmental agencies should not try to stand in the way of mergers and acquisitions involving multimedia corporations, they should nevertheless subject multimedia M&A to a higher level of scrutiny than other M&A deals, and in turn more frequently consider the selling or spinning off of news divisions to prevent oversaturation of any one political view. To demonstrate the exact role governments should play in these situations, this Note looks at the UK's regulatory review of Comcast's and Twenty-First Century Fox's competing bids to buy Sky plc, the European telecommunications company colloquially referred to as Sky, and the underlying concern over which company would acquire the channel Sky News.<sup>15</sup> Faced with the quagmire of wanting to encourage acquisitions but limit the control any single company could have on the press, the Competition and Markets Authority (CMA), the UK Panel on Takeovers and Mergers, and the Department for Digital, Culture, Media and Sport, in a joint effort, laid out a series of stipulations that both bidders needed to follow if they wanted to receive approval to acquire Sky. The most significant of these measures was that if Twenty-First Century Fox won the bidding war, they would need to sell off Sky's news division, thus eliminating the possibility of any one corporation having too much editorial control.<sup>16</sup>

This Note studies in detail the model put forth by these agencies and advocates that other countries, particularly European nations which already mirror the UK, follow along a similar path—applying increased governmental scrutiny to multimedia M&A deals—to ensure the continued freedom of the press. As a starting point, Part I examines how multimedia corporations' influence over the public has increased and tracks the recent uptick in large, all-encompassing multimedia M&A deals happening in the

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15. See, e.g., Stu Woo & Ben Dummett, *Comcast, Fox to Settle \$35 Billion Takeover Battle for Sky in Weekend Auction*, WALL ST. J. (Sept. 20, 2018, 7:27 PM), <https://www.wsj.com/articles/comcast-fox-to-settle-35-billion-takeover-battle-for-sky-in-weekend-auction-1537435073?ns=prod/accounts-wsj> [<https://perma.cc/N48W-UKV6>] (including a diagram tracking how the two bids developed).

16. See *Sky takeover battle looms after Hancock clears Fox bid*, BBC NEWS (June 5, 2018), <https://www.bbc.com/news/business-44373621> [<https://perma.cc/QX6C-WQ52>].

United Kingdom and greater parts of Europe. Part I then goes on to argue that because of their prominence in society, there is cause for concern that multimedia corporations, particularly news organizations, will disseminate information that is in their best interests rather than the public's and censor crucial information that runs counter to their objectives. Part II traces the origins of censorship in Great Britain and the arguments that subsequently arose for an informed and enlightened citizenry. Part II then takes note of how those very same concerns not only still exist today but are amplified by the consolidation of news organizations in our digitally-based society. Part III examines the aforementioned bidding war for Sky and the measures the UK government took to prevent the potential curtailment of the freedom of the press. In particular, Part III looks at the unique solution the UK's regulatory agencies came up with to have a competitive, pro-capitalist bidding process for Sky that was nevertheless subject to additional scrutiny. Part III then identifies other geographic locations where a similar protocol could be applied. The conclusion suggests other nations should adopt the strategy the United Kingdom employed of continuing to promote M&A but also imposing additional safeguards so no multimedia corporation's influence on the population is too substantial.

## I. How Multimedia M&A Triggers Censorship Concerns

### A. The Recent Boom in European Multimedia M&A

June 23rd, 2016 marked a day that will remain in the minds of many for years to come as citizens of the United Kingdom, by a slight majority, voted in favor of leaving the European Union—an event that would later be colloquially known as Brexit.<sup>17</sup> At the time of this writing it is still largely unknown which course of action the UK will take as it commences life separate from the European Union.<sup>18</sup> However, despite the great amount of economic and sociopolitical uncertainty following the Brexit referendum, M&A is booming in the UK. In the immediate aftermath of this tumultuous vote, many top analysts predicted a downturn in the value and

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17. See Alex Hunt & Brian Wheeler, *Brexit: All you need to know about the UK leaving the EU*, BBC NEWS (Jan. 31, 2019), <https://www.bbc.com/news/uk-politics-32810887> [<https://perma.cc/32F7-PQY6>].

18. After having been delayed several times, Brexit finally occurred on January 31st, 2020 as the UK officially left the European Union. *U.K. Leaves E.U., Embarking On an Uncertain Future*, N.Y. TIMES (Jan. 31, 2020, 6:51 PM), <https://www.nytimes.com/2020/01/31/world/europe/brexit-britain-eu.html/> [<https://perma.cc/QQ4Q-WYLD>]. For an analysis of what could unfold next, see Peter Barnes, *Brexit: What happens now?*, BBC NEWS (Oct. 31, 2019), <https://www.bbc.com/news/uk-politics-46393399> [<https://perma.cc/35DV-CEFQ>]. See also James Blitz, Alex Barker & George Parker, *Brexit timeline: the key dates in UK's divorce with EU*, FIN. TIMES (Mar. 28, 2019), <https://www.ft.com/content/64e7f218-4ad4-11e7-919a-1e14ce4af89b> [<https://perma.cc/G3UZ-J5W6>]; William James, *Timeline - Brexit at breaking point? Diary dates for Britain's EU departure*, REUTERS (Aug. 7, 2018, 9:11 AM), <https://uk.reuters.com/article/uk-britain-eu-timeline/timeline-brexit-at-breaking-point-diary-dates-for-britains-eu-departure-idUKKBN1KS1E7> [<https://perma.cc/AF6C-PWAR>]; *Brexit: UK and EU agree delay to 31 October*, BBC NEWS (Apr. 11, 2019), <https://www.bbc.com/news/uk-politics-47889404> [<https://perma.cc/7GBK-QA5T>].

number of M&A deals.<sup>19</sup> This projection was understandable too, as in the six-month lead-up to the referendum there was a significant decrease in M&A as companies played a wait-and-see approach before deciding whether to further pursue any new deals.<sup>20</sup>

Two years later, however, the situation is in stark contrast to the dreary picture prognosticators foresaw, as M&A activity in Great Britain has substantially *increased* following the Brexit vote. The recent twelve-month span, from mid-June 2017 through mid-June 2018, has witnessed a total value of \$551 billion in deals, eclipsing all other June-to-June periods since mid-June 2006 through mid-June 2007.<sup>21</sup> In just two years following the referendum, M&A in the UK has not only bounced back, but has flourished.<sup>22</sup> At first, this might appear to be a somewhat odd result, as one could imagine companies would be extremely hesitant to proceed with deals when the long-term outlook of the very nation they are planning to expand in is anything but crystal clear. Upon a more thorough review, though, several reasons for this apparent contradiction emerge. In part, the uptick in deals could be attributed to the decreased value of the pound post-Brexit, which could be enough of an enticement for corporations to proceed with their desires to acquire and consolidate in spite of the known risks that the UK could become financially disconnected from the rest of Europe.<sup>23</sup> The global economy too, while undoubtedly impacted by the Brexit vote, still has been very strong, which likewise could encourage more deals to be made.<sup>24</sup>

M&A involving European multimedia corporations has also been extremely robust, as highlighted by the Discovery, Inc.-Eurosport deal made prior to the Brexit vote and the even more impressive Comcast-Sky acquisition made two years after the referendum.<sup>25</sup> Discovery, Inc.'s decision to acquire all of Eurosport in July 2015 was certainly a game-changer.<sup>26</sup> In addition to having a slew of non-sports related, lifestyle

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19. See, e.g., Dominic Coyle, *Brexit vote expected to reduce Irish M&A deals in second half*, IRISH TIMES (Aug. 1, 2016, 5:45 AM), <https://www.irishtimes.com/business/economy/brexit-vote-expected-to-reduce-irish-m-a-deals-in-second-half-1.2740939> [https://perma.cc/EH95-QX9D]; Jesper Nielsen, Alexander Roos & Jeremy Boote, *Will Brexit Hurt—or Help—Your M&A Plans?*, BCG (Nov. 9, 2016), <https://www.bcg.com/en-us/publications/2016/merger-acquisitions-corporate-finance-will-brexit-hurt-help-your-m-a-plans.aspx> [https://perma.cc/Z97R-USDM]. See also *Brexit: Will It Sink the European M&A Ship?*, INTRALINKS (June 20, 2016), <https://www.intralinks.com/blog/2016/06/brexit-will-sink-european-ma-ship> [https://perma.cc/U7UM-UBRP].

20. See DELOITTE, *PLANNING A NEW COURSE: THE IMPACT OF BREXIT ON M&A ACTIVITY*, 2, 5 (2016), <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/international-markets/deloitte-uk-brexit-on-ma.pdf> [https://perma.cc/ZUZ6-MWP2].

21. Ben Martin & Saikat Chatterjee, *British M&A booms two years on from Brexit vote*, BUS. INSIDER (June 15, 2018, 1:02 PM), <https://www.businessinsider.com/r-british-ma-booms-two-years-on-from-brexit-vote-2018-6> [https://perma.cc/HMD5-LCVP].

22. See *id.*

23. See *id.*

24. See *id.*

25. This whole Note will discuss the latter acquisition.

26. See Ali Jaafar, *Discovery Communications Takes Full Control Of Eurosport For \$534 Million*, DEADLINE (July 22, 2015, 9:59 AM), <https://deadline.com/2015/07/discovery-eurosport-john-malone-olympics-1201483379/> [https://perma.cc/M3CW-K8DS]. Dis-

channels beforehand, Discovery, following this transaction, now secured a preeminent foothold in a vast portion of European media. Eurosport's primary channel, Eurosport 1, now under the auspices of Discovery, is available in seventy-five countries and is presented in twenty-one different languages, giving Discovery the ability to penetrate an incredible amount of diverse and foreign markets.<sup>27</sup> The extent of Discovery's reach following this acquisition cannot be emphasized enough, as Discovery is now capable of curating content for a substantial portion of the world's population.<sup>28</sup> Such great capacity takes on even larger significance after Eurosport obtained the rights to broadcast the Olympic Games—the crown jewel of international sports—for the majority of Europe beginning in 2018 and for the UK and France commencing in 2022.<sup>29</sup>

Having so much exclusive content housed under one corporation should obviously generate some concern.<sup>30</sup> Discovery CEO David Zaslav has not kept his ambitions hidden either, stating quite clearly that he wants his company to become the “sports Netflix” of Europe.<sup>31</sup> Since this deal, Discovery has only increased its hold on worldwide sports even further, signing in June 2018 a twelve-year, \$2 billion deal for global rights outside of the US for nearly 150 annual PGA Tour tournaments, with the end goal being the creation of an over-the-top streaming service—a golf “Netflix.”<sup>32</sup> Yet, despite these concerns, Discovery's venture into sports

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covery, Inc. was known at the time of the deal as Discovery Communications. Discovery previously held a 20% stake in Eurosport, dating back to 2012.

27. See *ABOUT EUROSPOORT*, EUROSPOORT, <https://corporate.eurosport.com/page/about-eurosport> [<https://perma.cc/L64M-KK5J>] (last visited Feb. 7, 2020) (select “Eurosport Factsheet” at the bottom of the page).

28. See *id.*

29. See *Eurosport wins Olympic TV rights for Europe*, BBC NEWS (June 29, 2015), <https://www.bbc.com/news/entertainment-arts-33311902> [<https://perma.cc/7L53-NNRL>]. Eurosport is colloquially referred to as the “ESPN of Europe.” Dade Hayes, *Tiger Woods And Discovery Set GolfTV Streaming Content Partnership*, DEADLINE (Nov. 27, 2018, 1:00 PM), <https://deadline.com/2018/11/tiger-woods-discovery-pga-tour-golftv-streaming-content-partnership-1202509574/> [<https://perma.cc/G2JE-7YYC>].

30. See, e.g., James B. Stewart, *When Media Mergers Limit More Than Competition*, N.Y. TIMES (July 25, 2014), <https://www.nytimes.com/2014/07/26/business/a-21st-century-fox-time-warner-merger-would-narrow-already-dwindling-competition.html> [<https://perma.cc/8HV3-XRBN>].

31. Michelle Castillo, *Discovery wants to become the ‘sports Netflix’ in Europe*, CEO says, CNBC (Oct. 3, 2017, 4:21 PM), <https://www.cnbc.com/2017/10/03/discovery-eurosport-network-can-be-sports-netflix-ceo-david-zaslav.html> [<https://perma.cc/DXR2-2ZYX>]; Scott Roxborough, *Discovery Wants to Leverage the Olympics to Create a “Netflix of Sports” for Europe*, HOLLYWOOD REP. (Feb. 5, 2018, 6:30 AM), <https://www.hollywoodreporter.com/news/discovery-wants-leverage-olympics-create-a-netflix-sports-europe-1080057> [<https://perma.cc/L5A8-TV4Q>]. Zaslav has claimed that Discovery is number one when it comes to its library of sports content that is available to viewers outside of the United States. See Lisa de Moraes, *Discovery Chief David Zaslav: “We Are The Media Company Of The Future”* - TCA, DEADLINE (Feb. 12, 2019, 9:24 AM), <https://deadline.com/2019/02/discovery-david-zaslav-media-company-of-future-tca-1202555517/> [<https://perma.cc/5UKF-PB8N>].

32. Sean Wolfe, *Discovery is making a Netflix-style streaming service for sports, and it's paying \$2 billion for streaming rights to the PGA Tour*, BUS. INSIDER (June 4, 2018, 10:47 AM), <https://www.businessinsider.com/discovery-pyas-2-billion-for-pga-tour-streaming-rights-netflix-like-service-2018-6> [<https://perma.cc/R484-8CSS>].

broadcasting has not triggered any antitrust scrutiny. In fact, in April 2018 antitrust officials under the authority of the European Commission conducted a raid on several multimedia businesses which owned sports content that had been suspected of violating antitrust rules prohibiting restrictive business practices.<sup>33</sup> Quite noticeably, neither Discovery nor Eurosport were subject to the raid.<sup>34</sup> In reality, this makes sense. There is only so much a sports broadcaster can do to influence or distort a match for the fans watching at home; the outcomes of games are regulated largely by independent third-party sporting organizations. Whatever a broadcasting entity's bias, it has little to no effect on the actual outcome of the athletic competition.<sup>35</sup>

The same does not hold true for news broadcasters. Within this subfield, the stakes are raised considerably each time an already established news service takes another news organization under its wing. The difference here involves scope. Given the sheer amount of new information available on a daily basis, news broadcasters have to compile the reports that are most important to them and leave out the rest.<sup>36</sup> The concern is twofold: first, accounts that the populace should readily be informed of may be skipped over and not selected for broadcast; and second, the stories that are selected can be greatly editorialized depending upon a person's—or more specifically in this case, a corporation's—conscious or unconscious bias. This latter concern is known as framing.<sup>37</sup> Here, commentary can be confused for the assertion of actual facts, or the facts are portrayed in a manner that compels viewers to draw certain conclusions that align with what the broadcasting entity desires. In essence, the broadcasters are not looking out for the public's best interests, but rather for their own corporate interests.<sup>38</sup> As authors David Skinner, James Robert Compton, and Mike Gasher describe, “media organizations and institutions can be seen to operate according to a logic that serves the interests of owners, shareholders, and advertisers, not the diverse, and often divergent,

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33. Matthew Garrahan & Nic Fildes, *EU raids media groups in sports rights antitrust probe*, FIN. TIMES (Apr. 11, 2018), <https://www.ft.com/content/0c91d03e-3d18-11e8-b7e0-52972418fec4> [<https://perma.cc/WE2Z-VUHV>].

34. See *id.*

35. That does not mean, however, that fans won't complain of perceived bias. See, e.g., *England vs Panama: BBC viewers complain over Danny Murphy's 'biased' commentary during record 6-1 win*, INDEP. (June 25, 2018, 8:01 AM), <https://www.independent.co.uk/sport/football/world-cup/england-vs-panama-bbc-sport-danny-murphy-commentary-world-cup-2018-a8414331.html> [<https://perma.cc/QPF2-DH57>]; Liam Happe, *Why commentary bias is holding British boxing TV coverage back*, YAHOO! SPORTS (Apr. 2, 2017), <https://sports.yahoo.com/news/why-commentary-bias-is-holding-british-boxing-tv-coverage-back-000807297.html> [<https://perma.cc/JR5X-CDVA>]. For a discussion of regional bias, see Rich G. Johnson & Miles Romney, *How the West Was Lost: Geographic Bias on Sports-Network Highlight Shows*, 13 J. SPORTS MEDIA, Spring 2018, at 99.

36. See James K. Buckalew, *News Elements and Selection by Television News Editors*, 14 J. BROADCASTING 47, 47-54 (1969) (describing editors as “gatekeepers”).

37. See CONVERGING MEDIA, DIVERGING POLITICS: A POLITICAL ECONOMY OF NEWS MEDIA IN THE UNITED STATES AND CANADA 10 (David Skinner, James R. Compton & Michael Gasher eds., 2005).

38. See *id.*



interests of civil society.”<sup>39</sup> When mergers and acquisitions involving news organization occur, any sort of framing they conduct is transmitted to a larger audience, creating the potential that more viewers could be influenced by that framing.<sup>40</sup>

Those very concerns materialized in the recent bidding war between two of the largest multimedia corporations, Comcast Corporation and Twenty-First Century Fox, as they battled one another for a controlling stake in Sky plc.<sup>41</sup> Certain aspects of these competing bids made this bidding war incredibly problematic. Most notably, Rupert Murdoch, the owner of Twenty-First Century Fox, already had control over some of the most prominent journals in the UK. In a somewhat dizzying array of corporate structure, Murdoch and his children, through the Murdoch Family Trust, owned News Corporation (known as News Corp) and likewise owned the subsidiary News UK, which in turn owned the periodicals *The Times*, *The Sunday Times*, and *The Sun*.<sup>42</sup> The potential that Murdoch could have even greater sway in the news industry presented a slew of problems, which were only further exacerbated by the fact his holdings already promoted a relatively politically right-leaning stance.<sup>43</sup> To complicate the situation even more, Murdoch had been investigated seven years earlier by the British and the United States governments over instances of phone-hacking and bribery conducted by *News of the World*, another publication which likewise had been a subsidiary of News Corporation.<sup>44</sup> The fallout from the scandal was extreme, as *News of the World* was left with no other choice but to cease publication, ending the tabloid’s 168-year run.<sup>45</sup> Given the

39. *Id.*

40. *See id.* at 292-93.

41. For a discussion on how the acquisition of Sky could affect the editorial policies of Sky News, see David Elstein, *Fox and Sky: what happens to media plurality now?*, OPENDEMOCRACY (July 8, 2017), <https://www.opendemocracy.net/en/opendemocracyuk/fox-and-sky-what-happens-to-media-plurality-now/> [<https://perma.cc/5EXJ-NPZV>].

42. *See* NEWS UK, <https://www.news.co.uk/> [<https://perma.cc/CQ93-DDXC>] (last visited Apr. 1, 2019).

43. *See generally* DAVID MCKNIGHT, *MURDOCH’S POLITICS: HOW ONE MAN’S THIRST FOR WEALTH AND POWER SHAPES OUR WORLD* (2013); Andy Beckett, *Murdoch’s Politics: How One Man’s Thirst for Wealth and Power Shapes Our World by David McKnight - review*, GUARDIAN (Feb. 20, 2013, 2:01 PM), <https://www.theguardian.com/books/2013/feb/20/murdochs-politics-david-mcknight-review> [<https://perma.cc/QY2J-PS86>]. Both sources track how Murdoch’s political stance has changed over time, noting that he has increasingly favored British Conservatism and American Republican values.

44. *See* *Phone hacking: David Cameron announces terms of phone-hacking inquiry*, DAILY TELEGRAPH (July 13, 2011, 12:56 PM), <https://www.telegraph.co.uk/news/uknews/phone-hacking/8634757/Phone-hacking-David-Cameron-announces-terms-of-phone-hacking-inquiry.html> [<https://perma.cc/VL5M-JU3Y>]. This “News Corporation” predated the later “News Corp.” *See* Georg Szalai, *News Corp. Unveils Post-Split Logo Based on Rupert Murdoch’s Handwriting*, HOLLYWOOD REP. (May 28, 2013, 9:44 AM), <https://www.hollywoodreporter.com/news/news-corp-post-split-logo-559126> [<https://perma.cc/ZV2K-GWTB>].

45. *See* *Instant view: Murdoch’s News of the World to shut after 168 years*, REUTERS (July 7, 2011, 12:13 PM), <https://www.reuters.com/article/us-newscorp-hacking-view/instant-viewmurdochs-news-of-the-world-to-shut-after-168-years-idUSTRE7664LN20110707> [<https://perma.cc/2H7U-NKGY>].

controversy that surrounded him, Murdoch at that time decided to withdraw News Corporation's bid to buy BSkyB, the very same company he was pursuing again in 2018.<sup>46</sup>

With all of these factors looming around Twenty-First Century Fox's bid, it set the stage for a regulatory headache as the UK government was left in the precarious position of wanting to let Fox and Comcast engage in a bidding war without interference, yet also wanting to prevent Murdoch from having an overwhelming portion of the British news industry under his control if he acquired Sky and its subset Sky News. In order to fully understand the complications that had been set before the UK government, it is necessary to look at the problems that occur when a press corps is not able to freely speak its mind.

## B. The Need for a Free Press

"#FakeNews," the oft-recited—and in many instances politically-tinged and undoubtedly controversial term—has become a trending topic in our digital age.<sup>47</sup> Without question, new innovations in technology over the past half-century have fundamentally changed the way people acquire knowledge.<sup>48</sup> On the one hand, the access to free information today is unprecedented—with a single click or tap, someone can retrieve the day's prominent news stories with no additional effort required.<sup>49</sup> Streaming videos and online simulcasts of television stations, along with social media posts and other forms of notifications, make it incredibly easy for a person to be constantly updated with the latest goings-on throughout her day.<sup>50</sup> On the other hand, this persistent interaction means that companies' abilities to reach specific viewers has never been greater. Any possible narrative they wish to promulgate now has such a large potency to affect other con-

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46. *News Corp withdraws bid for BSkyB*, BBC NEWS (July 13, 2011), <https://www.bbc.com/news/business-14142307> [<https://perma.cc/8NR8-C442>].

47. The list of examples is immense, but some of the most prominent illustrations include United States President Donald Trump's increasingly frequent quips against the media, France President Emmanuel Macron's efforts to give election candidates the ability to sue news agencies for alleged false reports, and Facebook recently implementing safeguards based off of UK privacy law to prevent another data breach in the aftermath of the Cambridge Analytica scandal. See, e.g., Tamara Keith, *President Trump's Description of What's 'Fake' Is Expanding*, NPR (Sept. 2, 2018, 7:02 AM), <https://www.npr.org/2018/09/02/643761979/president-trumps-description-of-whats-fake-is-expanding> [<https://perma.cc/3EUE-574W>]; Mishaal Rahman, *Amidst data scandal, Facebook will voluntarily enforce EU's new privacy rules "everywhere"*, XDA DEVELOPERS (Apr. 4, 2018, 7:08 PM), <https://www.xda-developers.com/facebook-voluntarily-enforce-eu-privacy-law/> [<https://perma.cc/2VUF-4BB9>]; Zachary Young, *French Parliament passes law against 'fake news'*, POLITICO (July 4, 2018, 12:44 PM), <https://www.politico.eu/article/french-parliament-passes-law-against-fake-news/> [<https://perma.cc/Z54L-EZWE>].

48. See Anmar Frangoul, *10 ways the web and internet have transformed our lives*, CNBC (Feb. 9, 2018, 3:30 AM), <https://www.cnbc.com/2018/02/09/10-ways-the-web-and-internet-have-transformed-our-lives.html> [<https://perma.cc/3UUT-LVPM>].

49. See *id.*

50. See generally OFCOM, *NEWS CONSUMPTION IN THE UK: 2018* (2018), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/116529/news-consumption-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/116529/news-consumption-2018.pdf) [<https://perma.cc/PS7M-2JH6>].

sumers that its influence becomes hard to even quantify.<sup>51</sup> The only hope for the prevention of such actions is the overly idealistic notion that editors will assume a moral obligation to present the truth and nothing but the truth in a candid, wholly open manner.<sup>52</sup>

This hope for journalistic and editorial independence dwindles significantly when news outlets are under the authority of the same corporation.<sup>53</sup> The very fact that these subsidiaries answer to the same controlling shareholder and/or CEO creates a precarious situation where the potential for abuse of authority is extreme.<sup>54</sup> Corporate synergy is not confined to the products these companies sell, but rather infiltrates the very messages the organizations disseminate.<sup>55</sup> Differentiation of opinion ceases—rather, the stories that reach the public are sliced and twisted, molded into a form that satisfies what the highest member of the corporate triangle wants.<sup>56</sup>

An apt analogy would be the distributing of megaphones to like-minded people in a larger crowd of individuals who harbor a range of diverse opinions. Previously, each person in this larger crowd could express their views, air their grievances, and advocate their positions as they saw fit. A passerby coming upon this larger group would undoubtedly hear bits and pieces of many people's perspectives. Parsing her way through the crowd, she would feel compelled by some of the opinions she heard and might very well reject others, but she would nevertheless be exposed to a healthy variety of viewpoints, the extremes on either end balancing each other out. While several of the people could make themselves more noticeable by raising their voices and drawing attention to themselves by some other means, all other voices could still be discerned by our passerby. The distribution of megaphones changes the dynamic. It is as if the other voices are not there at all—all that can be heard is the sole opinion, which drowns out all of its competitors. The passerby is unable to hear any opinion other than the one that is being blasted by the megaphones.

The same holds true for multimedia M&A. As a select few organizations control more and more of the news output, their proclamations can become overwhelming and oppressive, stifling any other voices that have steadfastly refused to join the fray. The same message is rattled off repeatedly, across different subsidiaries, channels, social media, and other platforms, creating an enormous echo chamber that renders all competing voices—those few whispers left—effectively mute.<sup>57</sup> Perhaps nowhere is

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51. See *id.* at 9.

52. See DONALD NORDBERG, *CORPORATE GOVERNANCE: PRINCIPLES AND ISSUES* 46 (2011).

53. See Indira A.R. Lakshmanan, *Why Sinclair's promos were a journalism ethics train wreck*, POYNTER (Apr. 9, 2018), <https://www.poynter.org/newsletters/2018/why-sinclair%C2%92s-promos-were-a-journalism-ethics-train-wreck/> [<https://perma.cc/N6KY-DM3U>].

54. See Ian Richards, *Stakeholders Versus Shareholders: Journalism, Business, and Ethics*, 19 J. MASS MEDIA ETHICS 119, 119–120 (2004).

55. See *id.* at 121.

56. See Lakshmanan, *supra* note 53.

57. See, e.g., Seth Flaxman, Sharad Goel & Justin M. Rao, *Filter Bubbles, Echo Chambers, and Online News Consumption*, 80 PUB. OPINION Q. 298, 299 (2016); Tom Cheshire,

there a better example of this very event occurring than in an online viral video from Deadspin capturing anchors from thirty-six local news stations across the United States identically reciting from a script which was given to them from their parent company Sinclair Broadcast Group.<sup>58</sup> Although the news anchors, studios, and the television channels are different, what is communicated is exactly the same. As the video proceeds, it is broken up into thirty-six smaller screens, each screen capturing one of the news stations, which are then played simultaneously. The viewer is left with the incredibly eerie scene of seeing and hearing a homogenous message reverberate thirty-six times, almost entirely in unison.<sup>59</sup>

Journalists being forced to read something under the guise of originality is not freedom of speech—it is censorship, pure and simple. It is this very type of censorship of the press that materialized in the minds of UK government officials when Twenty-First Century Fox first announced their bid. They would certainly be familiar with it, as it was not that long ago that the government were the ones suppressing others from speaking their minds.

## II. The Ongoing Combat Against Censorship

This confrontation between censorship and free expression has an extensive history in England. There is one notable difference, though: up through the twentieth century the concern was not with *corporations* restraining free expression, but with the *government* suppressing others from speaking freely. Since then, however, corporations have grown so much in stature that they have become just as effective at controlling which information is made available to the public. This section tracks this development.

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*Social media 'echo chamber' causing political tunnel vision, study finds*, SKY NEWS (Feb. 6, 2017, 6:49 AM), <https://news.sky.com/story/social-media-echo-chamber-causing-political-tunnel-vision-study-finds-10755219> [<https://perma.cc/68JN-55DE>]; Andrew Pierce, *Don't Blame Social Media for Political Echo Chambers*, MEDIUM (Feb. 15, 2018), <https://medium.com/@apierce227/dont-blame-social-media-for-political-echo-chambers-ded543cdb7de> [<https://perma.cc/E6NU-DEVQ>].

58. Deadspin, *Sinclair's Soldiers in Trump's War on Media*, YOUTUBE (Apr. 2, 2018), <https://www.youtube.com/watch?v=fHfgU8oMSo> [<https://perma.cc/U3UM-WEFN>]. In an extreme amount of irony, all of the news anchors, reading off from the same script, cautioned viewers about the pervasiveness of “Fake News” from other media sources and how it was “extremely dangerous to our democracy.”

59. *Id.* To add to the irony, Deadspin, the site that posted the video, has had its own struggles with censorship. In late October 2019, Paul Maidment, Editorial Director of G/O Media, Deadspin's new parent company, issued an internal memo telling Deadspin's staff to solely stick to writing about sports—a veiled threat that they should not engage in political commentary. Many staffers resigned shortly thereafter. Wendy Lee & Meg James, *Deadspin staffers rebel against 'stick to sports' mandate*, L.A. TIMES (Oct. 30, 2019, 6:30 PM), <https://www.latimes.com/entertainment-arts/business/story/2019-10-30/deadspin-staffers-rebel-against-stick-to-sports-mandate> [<https://perma.cc/FS4T-3BJD>]; Maxwell Tani, *G/O Media Tells Deadspin Staff in Leaked Memo: Stick to Sports*, DAILY BEAST (Oct. 29, 2019, 3:15 PM), <https://www.thedailybeast.com/go-media-tells-deadspin-staff-in-leaked-memo-stick-to-sports> [<https://perma.cc/JX6B-F5HR>] (last updated Dec. 10, 2019, 5:00 PM).

### A. The History of Government-Run Censorship in England

The advent of the printing press around the mid-fifteenth century drastically changed people's ability to copy and distribute works.<sup>60</sup> The British government quickly needed to devise a manner to control how this potentially disruptive technology could be used as it became increasingly available to the public.<sup>61</sup> In 1637, the English Star Chamber Court imposed a decree which required all publishers to get a license and have their work registered in a record book called the Stationers' Register.<sup>62</sup> The register was run by the Stationers' Company of London, which had a royal charter giving them the means to regulate the publishing industry.<sup>63</sup> Shortly thereafter, however, the Star Chamber was abolished.<sup>64</sup> In need of a new censorship-enforcing mechanism, Parliament issued the *Ordinance for the Regulating of Printing* in 1643, which imposed the same conditions that the Star Chamber originally enforced, including requiring a license prior to the publishing of all works and the registration of printing materials at the Stationers' Register.<sup>65</sup> These measures, combined with the added threats of the government destroying any works that it deemed offensive and imprisoning all writers and publishers who violated any of these terms, led to a severe restraint on items that could be published.<sup>66</sup> Having to get Parliament's permission for a license in effect barred anyone from publishing, and thus disseminating, any material that ran counter to the government's views, as it would not receive approval. For all intents and purposes, Parliament held a monopoly on the information that was accessible to the public.<sup>67</sup>

Shortly following the institution of the licensing order, English poet and theorist John Milton wrote *Areopagitica*, in which he offered a vehement critique of the government's censorship methods.<sup>68</sup> Milton decried the fact that printers could only get a license if they produced work that conformed to the government's liking, stating, "[t]ruth and understanding are not such wares as to be monopoliz'd and traded in by tickets and stat-

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60. The first flat-bed printing press was reportedly made in the mid-fifteenth century by the German Johannes Gutenberg. See PHILIP B. MEGGS, *A HISTORY OF GRAPHIC DESIGN* 58-59, 61 (John Wiley & Sons, Inc. ed., 1998).

61. See generally ELIZABETH L. EISENSTEIN, *THE PRINTING REVOLUTION IN EARLY MODERN EUROPE* (Cambridge U. Press, 2d ed. 2012).

62. See *A Decree of the Star Chamber Concerning Printing July 11, 1637*, JEREMY NORMAN'S HIST. INFO., <http://www.historyofinformation.com/expanded.php?id=3899> [<https://perma.cc/R2FM-GZT3>] (last visited May 9, 2019).

63. See *id.*

64. See *1641: The Act for the Abolition of the Court of Star Chamber*, ONLINE LIBR. LIBERTY, <https://oll.libertyfund.org/pages/1641-the-act-for-the-abolition-of-the-court-of-star-chamber> [<https://perma.cc/CK3S-59WX>] (last visited Apr. 2, 2019).

65. See Eunmi Park, *Areopagitica in the Licensing Controversy: Milton's Rhetorical Strategies and Modes*, 10 J. BRIT. & AM. STUD. 113, 116 (2004).

66. See *id.*

67. See *id.*

68. See JOHN MILTON, *AREOPAGITICA; A SPEECH OF MR. JOHN MILTON FOR THE LIBERTY OF UNLICENC'D PRINTING, TO THE PARLAMENT OF ENGLAND* (John W. Hales ed., 1904) (1644). Henceforth the work shall be referred to as *AREOPAGITICA*.

utes and standards.”<sup>69</sup> Any such standards severely impaired the spreading of knowledge and truth, which in turn abridged peoples’ very notions of liberty. As he pled, “[g]ive me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”<sup>70</sup>

Fittingly enough, in an incredibly self-referential act, Milton distributed *Areopagitica* through published pamphlets without obtaining a license, flatly ignoring the very rule of law which he fervently desired to abolish.<sup>71</sup> Yet, despite his best efforts, licensing would go on in England for another half-century, until finally being extinguished between 1694 and 1695.<sup>72</sup> Nevertheless, Milton’s principles detailing the need to have freedom of expression continued to resonate, even though they did not have an effect on Parliament.<sup>73</sup>

Indeed, the same ideology was articulated shortly thereafter on the other side of the Atlantic by the American colonists and Founding Fathers of the United States. *The Federalist Papers* emphasized that a wide variety of voices were required in order to retain liberty. This topic was discussed by James Madison in Federalist No. 10.<sup>74</sup> Continuing the discourse that Alexander Hamilton initiated in Federalist No. 9,<sup>75</sup> Madison spoke of the detrimental effects factions could have on the United States. A faction, per Madison, was “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”<sup>76</sup> For Madison, as the nascent country began to take shape, it was of the utmost importance that no group of people wrench too much authority from any other group. Factions, Madison conceded, were inevitable.<sup>77</sup> Indeed, any attempt to abolish them entirely would lead to a stifling of the freedoms that his fellow compatriots had so desperately fought for. To solve this problem, Madison instead advocated for a system in which a conglomerate of factions would exist simultaneously, the idea being that no faction would usurp too much force from any other—

Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common

69. *Id.* at 33

70. *Id.* at 50.

71. See Vivienne Larminie, *On this Day: 23 November 1644, the publication of Milton’s Areopagitica and regulation of the press*, HIST. OF PARLIAMENT, <https://www.historyofparliamentonline.org/periods/stuarts/day-23-november-1644-publication-miltons-areopagitica-and-regulation-press> [https://perma.cc/4GSK-DUF7] (last visited Apr. 2, 2019).

72. Raymond Astbury, *The Renewal of the Licensing Act in 1693 and its Lapse in 1695*, s5-XXXIII(4) LIBRARY 296, 305-06 (Dec. 1978).

73. See Nathan Chaney, Casey Noga & Thomas H. Luxon, *The John Milton Reading Room: Areopagitica*, DARTMOUTH C., [https://www.dartmouth.edu/~milton/reading\\_room/areopagitica/intro/text.shtml](https://www.dartmouth.edu/~milton/reading_room/areopagitica/intro/text.shtml) [https://perma.cc/3DZ9-LJE7] (last visited May 9, 2019).

74. THE FEDERALIST NO. 10 (James Madison).

75. THE FEDERALIST NO. 9 (Alexander Hamilton).

76. THE FEDERALIST NO. 10, at 56 (James Madison) (Charles Scribner ed., 1863).

77. See *id.* at 60.

motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.<sup>78</sup>

In other words, while one faction could be larger than others, it would by no means tower over any of the competing factions, and ideally over time it would eventually diminish and another faction would take its place as the preeminent one. As Madison succinctly put it, “[t]he influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the *other States*.”<sup>79</sup> Like variables on opposites sides of equations, these factions would in large part cancel out or at least lessen the control any one group could have upon the rest at any certain time. While Madison was largely discussing political representation and what the ideal proportion of electors should be in *Federalist No. 10*, the same principles he put forth hold true for freedom of speech.<sup>80</sup> By favoring a large amount of factions, a large amount of opinions, no voice too greatly dominates another.

As methods of disseminating information began to improve in Great Britain, other theorists likewise voiced their unease over the possibility that certain peoples’ views could be suppressed or eliminated altogether. In John Stuart Mill’s 1859 work *On Liberty*, Mill disclosed his own apprehensions that governments and other authority figures could easily smother opinions that ran against their own. In the opening paragraph of his second chapter, Mill distinctly advocated that everyone’s expression should be protected, even down to the sole dissenter: “[i]f all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”<sup>81</sup> Mill made it clear that even if the authority backed the opinion articulated by the majority, there was nevertheless the possibility that the minority could be correct and the majority wrong.<sup>82</sup> The silencing of the expression of a person’s opinion to Mill was a “peculiar evil,” one that was “robbing the human race.”<sup>83</sup> Even opinions held by the minority that were in error deserved their place, for they still very well could “contain a portion of truth.”<sup>84</sup>

These censorship concerns that Mill and others expressed would carry over into the twentieth century as well. The first five decades of the 1900s, punctuated by two world wars, created a situation where censorship

78. *Id.* at 63.

79. *Id.* at 64 (emphasis added).

80. Unequivocally, voting itself is largely considered to be a subset of freedom of speech. Armand Derfner & J. Gerald Hebert, *Voting Is Speech*, 34 *YALE L. & POL’Y REV.* 471, 471 (2016) (“It seems like an obvious proposition that a citizen registering to vote or casting a ballot is engaging in free speech.”).

81. JOHN STUART MILL, *ON LIBERTY* 33 (4th ed. 1869) (1859).

82. *See id.* at 34.

83. *Id.* at 33.

84. *Id.* at 95.

could thrive.<sup>85</sup> Proponents of the practice argued that such ventures were necessary to achieve victory on the battlefield, and somewhat ironically, to save democracy.<sup>86</sup> Once again, the British government was at the helm of these efforts. Some of the British government's decisions had reasonable explanations. It made sense, for instance, for Parliament to ban the spreading of military secrets to any potential enemies.<sup>87</sup> Some of their other policies, however, seemed to have ulterior motives, the most pertinent example being the creation of the aptly-named Ministry of Information. Founded briefly at the outset of World War I and then revived and enlarged at the beginning of World War II, the Ministry of Information was a governmental department whose purpose was to publicize wartime news and promote patriotism, while systematically eradicating reports of discontent.<sup>88</sup> Unlike past censorship endeavors, the government not only censored stories that ran counter to its narrative, but it also actively *created* its own propaganda.<sup>89</sup> Serving as a public relations firm yet trying to act like a reputable news outlet that its citizenry could trust, the Ministry of Information unsurprisingly faced a large amount of backlash from reporters.<sup>90</sup> This pushback from the press rendered the Ministry of Information largely ineffective.<sup>91</sup> Nevertheless, once again the British people were faced with the reality that much of what they wrote or said would be subject to revision or edited out entirely, and much of what they read or heard would be far from the actual truth.

Fast-forward to the twenty-first century and the same problems still exist. Censorship today is alive and well, but there is one significant difference—while governments still institute censorship, they are not the only ones. Instead, a new development has occurred where corporations, particularly those involved in the multimedia industry, conduct their own forms of censorship.<sup>92</sup> The result of this phenomenon has flipped the

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85. For an example of the chaos wartime censorship created, see Henry Irving, *Chaos and Censorship in the Second World War*, HIST. GOV'T BLOG (Sept. 12, 2014), <https://history.blog.gov.uk/2014/09/12/chaos-and-censorship/> [https://perma.cc/RT9P-ELCR].

86. See *id.* See generally DAVID WELCH, *PERSUADING THE PEOPLE: BRITISH PROPAGANDA IN WORLD WAR II* (2016). For a discussion of wartime curtailment of the press in another setting and the legal and moral ramifications that come with it, see Jake Kline, *Abraham Lincoln's Presidential Ideology as Originally Defined in His Lyceum Address of 1838* (June 1, 2017) (unpublished master's thesis, University of Cambridge) (on file with the author).

87. See Jürgen Wilke, *Censorship and Freedom of the Press*, EUR. HIST. ONLINE (May 8, 2013), at 46, <http://ieg-ego.eu/en/threads/european-media/censorship-and-freedom-of-the-press> [https://perma.cc/UAN3-CTLH].

88. See *The Ministry of Information, INF series and INF 3*, NAT'L ARCHIVES, <http://www.nationalarchives.gov.uk/theartofwar/inf3.htm> [https://perma.cc/779T-AA2R] (last visited Apr. 2, 2019).

89. See *id.*

90. See *id.*

91. See Irving, *supra* note 85.

92. See Mark Scott, *Welcome to new era of global digital censorship*, POLITICO (Jan. 16, 2018, 5:00 PM, last updated 4:13 AM), <https://www.politico.eu/article/google-facebook-twitter-censorship-europe-commission-hate-speech-propaganda-terrorist/> [https://perma.cc/PZ24-99A5].



power dynamic between businesses and governments: instead of businesses seeking permission from governments to disseminate information, legislative bodies are now struggling to enact measures to prevent companies from suppressing free speech.<sup>93</sup>

## B. The Role Reversal Between Governments and Corporations

As explained above, for a long time the English people's greatest suppressor of expression emanated from the English government itself.<sup>94</sup> Individual publishers would have been extremely fortunate if their material was printed without government censorship or harsher forms of backlash. Businesses, if they had enough clout and were lucky, may have been granted permission by the Crown to legally print their periodicals, but it would have been at the expense of having to self-edit all information they wanted to send to the larger masses so it would comply with governmental standards.<sup>95</sup> The fallout from this, of course, was that whichever information did actually make it to the greater citizenry would more likely than not be sparse, incomplete, muted, and/or twisted beyond recognition. The government acted as a sieve, only letting through to the public stories that aligned directly with its own goals—anything that did not fit was tossed aside.

Now, because of their sheer size and technological prowess, corporations have so much authority and influence in consumers' everyday lives,<sup>96</sup> that for all intents and purposes their ability to control the flow of ideas and information is on par with governmental entities themselves.<sup>97</sup> The sieve still very much exists, as these corporations control which messages are sent to the public and edit those messages so they fit into whichever larger goal they are seeking.<sup>98</sup> Thus, in many ways, corporations have arguably overtaken governments as the largest suppressors of information.<sup>99</sup>

Of course, the concern involving censorship has never exactly been about upholding the “freedom of the press” *per se*. Rather, it has been

93. See Max Fisher, *Inside Facebook's Secret Rulebook for Global Political Speech*, N.Y. TIMES (Dec. 27, 2018), <https://www.nytimes.com/2018/12/27/world/facebook-moderators.html?module=inline> [<https://perma.cc/YPZ3-YLWM>].

94. See *supra* Part II.A.

95. See *supra* text accompanying note 65.

96. See *supra* Part I.B; see also *How 5 Tech Giants Have Become More Like Governments Than Companies*, NPR (Oct. 26, 2017, 4:20 PM), <https://www.npr.org/2017/10/26/560136311/how-5-tech-giants-have-become-more-like-governments-than-companies> [<https://perma.cc/896B-N6N9>]; Rana Foroohar, *Are Companies More Powerful Than Countries?*, TIME (Jan. 27, 2012), <http://business.time.com/2012/01/27/are-companies-more-powerful-than-countries/> [<https://perma.cc/QD2N-GFUK>]; Parag Khanna & David Francis, *These 25 Companies Are More Powerful Than Many Countries*, FOREIGN POL'Y (Mar. 15, 2016), <https://foreignpolicy.com/2016/03/15/these-25-companies-are-more-powerful-than-many-countries-multinational-corporate-wealth-power/> [<https://perma.cc/T5Z3-NMNB>].

97. See ROBERT W. MCCHESENEY & JOHN NICHOLS, *OUR MEDIA, NOT THEIRS: THE DEMOCRATIC STRUGGLE AGAINST CORPORATE MEDIA* 25–29 (2002).

98. See *id.*

99. See Fisher, *supra* note 93.

about people seeking assurances that the information that is disseminated to them has not been filtered or curtailed to the extent that what they are hearing, seeing, and otherwise consuming is so tainted or so different from the truth that it is corrupting.<sup>100</sup> Ironically, in seeking the best means to prevent corporations from abusing their power and in order to maintain some remnant of free speech in today's digital world, the people have to turn to the very institutions they have distrusted for so long—their governments. Only with proper government intervention can multimedia corporations' blatant abuse of their ever-increasing influence be stymied. As such, modern governments need to utilize existing mechanisms as well as create new regulations to ensure that corporations' selectivity of news does not run rampant. With mergers and acquisitions only adding to corporations' sway,<sup>101</sup> there is no simple answer as to how best keep businesses in check. The United Kingdom's recent handling of the bids for Sky, however, may lay the groundwork for other countries to follow as they seek the proper balance between allowing businesses to freely enter into agreements with one another yet preventing the monopolization of any media market.

### III. The Paradigm Solution to Combat Corporate Censorship: The United Kingdom

#### A. The UK Government's Handling of the Sky News Conundrum

In many ways, the bidding war between Twenty-First Century Fox and Comcast to acquire Sky, and the government's response to this undertaking, fit precisely into the larger cultural zeitgeist that the United Kingdom and large parts of Europe manifested. As outlined in Part I, *supra*, M&A over the past decade had been occurring at a breakneck pace.<sup>102</sup> It was only a matter of time before one multimedia deal would come along that was so large and involve so many long-lasting ramifications that regulatory agencies would have to step in and intervene. The question, then, was how much regulation would be needed. This issue was addressed directly by the UK as the bidding process unfolded.

As explained in Part I, *supra*, this was not the first time Murdoch had sought to acquire full control of Sky.<sup>103</sup> When Murdoch first attempted to buy all of BSkyB back in June 2010, his bid was initially met with little to no scrutiny by government regulators, as UK Business Secretary Vince

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100. See, e.g., Rory Cellan-Jones, *Fake news worries 'are growing' suggests BBC poll*, BBC NEWS (Sept. 22, 2017), <https://www.bbc.com/news/technology-41319683> [<https://perma.cc/T8QL-BAFM>]; Lucy Handley, *Nearly 70 percent of people are worried about fake news as a 'weapon,' survey says*, CNBC (Jan. 22, 2018, 7:35 AM), <https://www.cnn.com/2018/01/22/nearly-70-percent-of-people-are-worried-about-fake-news-as-a-weapon-survey-says.html> [<https://perma.cc/9H7U-2YR5>]; Jennifer Peters, *Fake News Remains Top Industry Concern in 2017*, NEWS MEDIA ALLIANCE (Oct. 4, 2017), <https://www.newsmediaalliance.org/fake-news-concern/> [<https://perma.cc/4JPD-5HFF>].

101. See *supra* Part I.

102. See *supra* Part I.A.

103. See *supra* text accompanying note 46.

Cable remained largely silent on the topic.<sup>104</sup> This all changed however in October of that year when other media companies in the UK, in a showing of support for one another, jointly signed a letter opposing the acquisition, arguing that Murdoch's proposed move would fundamentally alter the industry and tilt too much power in his favor.<sup>105</sup> Shortly thereafter, in early November, Cable took action, calling upon the media regulator Ofcom to look into the bid.<sup>106</sup> Although Ofcom's report expressed deep concerns over whether a media plurality could remain if the BSkyB deal went through, Culture Secretary Jeremy Hunt, who had assumed Cable's duties, gave his permission for the acquisition to proceed.<sup>107</sup> The deal only stalled and was eventually abandoned once the *News of the World* hacking scandal came to light.<sup>108</sup> Facing mounting public backlash, Murdoch quickly realized that there was no possible way that the deal could still be made in the current social climate.<sup>109</sup> Instead of waiting for all three main political parties in the House of Commons to reject the bid, Murdoch withdrew the bid on his own accord.<sup>110</sup>

Come the second go-around, which commenced in December 2016 when Twenty-First Century Fox announced that they intended to make a cash offer for the remaining shares of Sky, the stakes were arguably much higher.<sup>111</sup> If Murdoch completed the deal, it could lead, as the worry was back in 2010, to "a fully integrated newsroom, with Sky News and Murdoch's stable of News International papers—the *Times*, *Sunday Times*,

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104. See Mark Sweney & Jill Treanor, *Vince Cable adopts hands-off approach to News Corporation's BSkyB takeover*, *GUARDIAN* (Sept. 15, 2010, 4:29 PM), <https://www.theguardian.com/politics/2010/sep/15/vince-cable-news-corporation-bskyb> [<https://perma.cc/L48G-VMCNJ>]; Georgi Petrov Kandilarov, *Government Intervention in Mergers and Acquisitions 76* (2015) (unpublished master's thesis, Aalborg University), [https://projekter.aau.dk/projekter/files/214407336/Thesis\\_Georgi\\_Kandilarov.pdf](https://projekter.aau.dk/projekter/files/214407336/Thesis_Georgi_Kandilarov.pdf) [<https://perma.cc/PN2W-9LUSJ>].

105. Kandilarov, *supra* note 104, at 76. *The Daily Telegraph*, *Daily Mirror*, *Daily Mail*, and *The Guardian* all signed the letter.

106. *Id.* at 77.

107. *Id.* at 77–78; see also Dan Sabbagh, *News Corp receives Ofcom queries over BSkyB deal*, *GUARDIAN* (Dec. 15, 2010, 7:38 AM), <https://www.theguardian.com/media/2010/dec/15/ofcom-news-corp-bskyb> [<https://perma.cc/B3KQ-A4CFJ>]; Dan Sabbagh, James Robinson & Mark Sweney, *Rupert Murdoch finally gets green light for BSkyB takeover - but at a price*, *GUARDIAN* (June 30, 2011, 3:19 PM), <https://www.theguardian.com/media/2011/jun/30/rupert-murdoch-bskyb-takeover-price> [<https://perma.cc/4WGG-5JWWJ>].

108. See *supra* text accompanying notes 44–45.

109. See Kandilarov, *supra* note 104, at 78–79.

110. See James Robinson, *News Corp pulls out of BSkyB bid*, *GUARDIAN* (July 13, 2011, 9:43 PM), <https://www.theguardian.com/media/2011/jul/13/news-corp-pulls-out-of-bskyb-bid> [<https://perma.cc/M59Q-8V6YJ>].

111. Kate Holton & Paul Sandle, *Murdoch's Fox agrees \$14.6 billion Sky deal to expand empire*, *REUTERS* (Dec. 15, 2016, 7:47 AM), <https://www.reuters.com/article/us-sky-m-a-twenty-first-fox/murdochs-fox-agrees-14-6-billion-sky-deal-to-expand-empire-idUSKBN1441JH> [<https://perma.cc/BJN2-XEN6J>]. Prior to making the offer, Murdoch already owned 39% of Sky. See David Lieberman & Patrick Hipes, *21st Century Fox Reaches Preliminary Deal To Acquire UK's Sky*, *DEADLINE* (Dec. 9, 2016, 9:43 AM), <https://deadline.com/2016/12/21st-century-fox-buys-sky-1201867561/> [<https://perma.cc/C4F9-5SVUJ>].

*Sun*[,] and *News of the World*—sharing resources and journalists.”<sup>112</sup> With his family trust already holding over a third of the UK’s newspaper market, Murdoch would have an unprecedented amount of control over the 24-hour news cycle if Sky News were added to the mix.<sup>113</sup> What made the potential acquisition more concerning this time around was that the landscape of the industry had changed drastically since 2010, as the advent of new digital streaming capabilities, amalgamated with a populace which had become far more accustomed to accessing information on mobile devices, meant that any cornering of the news market would affect a far greater number of people and apply to more than one medium.<sup>114</sup>

With specters of 2010 and 2011 still fresh in many peoples’ minds, Twenty-First Century Fox’s renewed push for Sky unsurprisingly triggered a great deal of alarm within the various branches and agencies of the UK government.<sup>115</sup> The Competition and Markets Authority (CMA), upon the Culture Secretary’s request, conducted an investigation into two facets of the proposed acquisition.<sup>116</sup> While the CMA concluded that Twenty-First Century Fox would remain committed to upholding certain broadcasting standards if the potential deal went through, the CMA also stated quite clearly that the transaction was “not in the public interest” as it would severely threaten the government’s desire to preserve media plurality.<sup>117</sup> The CMA’s report focused largely on Sky News, and what the greater societal ramifications would be if the Murdoch Family Trust had full control of that news outlet.<sup>118</sup> The CMA declared unequivocally that the Murdochs having Sky News would result in a stranglehold on the country’s news media—the family would have “too much influence over public opinion and the political agenda.”<sup>119</sup> The Chair of CMA’s independent investigation group, Anne Lambert, made it apparent that this was not just any typical bid; rather, the very upholding of democratic principles was at stake: “[m]edia plurality goes to the heart of our democratic process. It is very

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112. James Robinson, *Rupert Murdoch’s Sky takeover should be blocked, Vince Cable told*, GUARDIAN (Sept. 13, 2010, 7:24 AM), <https://www.theguardian.com/media/2010/sep/13/rupert-murdoch-bskyb-claire-enders> [<https://perma.cc/E9LW-CDX8>].

113. See Sweney & Treanor, *supra* note 104.

114. Conversely, Twenty-First Century Fox argued that because of some recent developments in the media industry there should have been less regulatory concern regarding a Sky bid than there had been in 2010, rather than more. Fox contended that they needed to acquire other assets in order to compete with the likes of Google, Facebook, and other tech giants that also reported the news. See Mark Sweney, *Rupert Murdoch unlikely to spin off Sky News in takeover battle*, GUARDIAN (Dec. 13, 2016, 3:00 PM), <https://www.theguardian.com/business/2016/dec/13/rupert-murdoch-unlikely-to-spin-off-sky-news-in-takeover-battle> [<https://perma.cc/T9AB-ES7D>].

115. See, e.g., Matt Burgess, *Murdoch’s Sky takeover faces investigation from UK’s competition regulator*, WIRED (Sept. 12, 2017), <https://www.wired.co.uk/article/murdoch-sky-fox-takeover-investigation> [<https://perma.cc/24SK-TRY5>].

116. See Press Release, Competition and Markets Authority, CMA provisionally finds Fox/Sky deal not in the public interest (Jan. 23, 2018), <https://www.gov.uk/government/news/cma-provisionally-finds-foxs-sky-deal-not-in-the-public-interest> [<https://perma.cc/MZ29-YH6A>].

117. *Id.*

118. *Id.*

119. *Id.*

important that no group or individual should have too much control of our news media or too much power to affect the political agenda.”<sup>120</sup>

Members of the CMA were not the only ones who were troubled by what a Twenty-First Century Fox-Sky deal would entail. In a showing of solidarity that is rarely seen in today’s often-polarized political climate, politicians ranging across the political spectrum urged that the transaction be subjected to the highest amount of scrutiny.<sup>121</sup> In one telling example was a letter sent to the CMA by former Labour Party leader Ed Miliband, which was co-signed by Conservative MP Kenneth Clarke and former Justice Minister Charles Falconer, along with Liberal Democrat leader Vince Cable, who as previously stated had played an influential role in the government’s examination of the dropped BSkyB deal over seven years ago.<sup>122</sup> For these statesmen, regardless of the steps Twenty-First Century Fox would take, the transaction could not be allowed to go forward in any capacity whatsoever: “[o]ur view is that neither [the] structural nor behavioral remedies proposed are an acceptable answer to the plurality concerns raised.”<sup>123</sup> The very fact that Cable, who had at first been so ambivalent in deciding whether the earlier BSkyB acquisition should trigger government intervention,<sup>124</sup> was outrightly against the Sky transaction the second time speaks volumes. He, along with many other government leaders, clearly felt that a free press corps could not be sustained if Murdoch cornered so much of the market.

Something needed to be done. Obviously, the stance that Miliband and his cosigners took was somewhat extreme—regardless of how anyone felt about the Murdochs, it would seem unfair to fundamentally bar any corporation from acquiring another no matter what concessions they made to diminish monopolization fears. Conversely, letting the deal go through without any additional inquiry was also not tenable. There had to be a middle ground between these two views that could still serve various business groups but also be in the greater public interest.

The CMA proposed two solutions which they believed would substantially lessen politicians’ concerns.<sup>125</sup> In either case Twenty-First Century Fox would be allowed to acquire Sky, but it came with added conditions.<sup>126</sup> Under the first proposal, Twenty-First Century Fox would agree

120. *Id.*

121. *See, e.g.,* Mark Sweney & Graham Ruddick, *Rupert Murdoch’s Sky bid is not in public interest, says regulator*, *GUARDIAN* (Jan. 23, 2018, 9:57 AM), <https://www.theguardian.com/business/2018/jan/23/rupert-murdoch-sky-bid-blocked-21st-century-fox-cma> [<https://perma.cc/BX66-XTVS>].

122. Joe Mayes, *Fox Beefs Up Sky News Remedies in Bid for Regulatory Clearance*, *BLOOMBERG* (Feb. 12, 2018, 8:55 AM), <https://www.bloomberg.com/news/articles/2018-02-12/fox-beefs-up-sky-news-remedies-in-bid-for-regulatory-clearance> [<https://perma.cc/E8RJ-X7WF>].

123. *Id.*

124. *See supra* text accompanying note 104.

125. Charles Riley, *21st Century Fox offers to sell Sky News to Disney*, *CNN* (Apr. 3, 2018, 4:57 AM), <https://money.cnn.com/2018/04/03/media/fox-sky-news-disney/index.html> [<https://perma.cc/NB29-STPF>].

126. *Id.*

to spin off Sky News and sell it to Disney, who had been actively eyeing the business as a possible acquisition.<sup>127</sup> Under the second proposal, instead of selling Sky News to Disney, Twenty-First Century Fox would simply divest itself of the news outlet, letting it be entirely independent until it was eventually acquired by a different company.<sup>128</sup> With either scenario, Sky News would not be under Twenty-First Century Fox's umbrella and therefore would not be under the control of the Murdoch Family Trust. Disney's potential acquisition of Sky News did not raise any regulatory red flags, as the company had a very small presence in the news business in the UK.<sup>129</sup> Obviously, if Twenty-First Century Fox instead just rid itself of Sky News without selling it to another company, Sky News would also be entirely detached. Either way, the end result would be the same—the primary concern regarding the Twenty-First Century Fox-Sky deal would be dispelled, as Sky News would remain separate from Fox, maintaining media plurality.<sup>130</sup>

Giving these two proposals a closer look, one can begin to identify regulators' rationales behind these decisions. While it would be ideal for the UK government to have a multimedia industry in place with no ingrained political biases whatsoever, if such a system was truly unattainable, the next best option would be to have companies with countering biases offsetting one another. Recall the example set forth in Part I, *supra*, of our everyday person passing through a crowd of people: she still could discern competing, differing voices.<sup>131</sup> By forcing Sky News to separate itself from the Sky umbrella, the UK government accomplished a similar objective. Their stipulations meant that if Twenty-First Century Fox did strike a deal to buy Sky, Sky News itself would not be a part of it and would become temporarily independent until an interested third party acquired it. Sky News then would serve as an alternate voice, a viable option that consumers could turn to, instead of becoming yet another resource in Murdoch's expansive news arsenal.<sup>132</sup> While Murdoch would certainly have a large presence within UK multimedia, he was denied his amplifier of Sky News; although he would have substantial control, it did not go past the tipping point.

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127. *Id.*

128. *Id.*

129. The company, for instance, did not own any journals in the UK. See Matthew Garrahan, *Disney offers to buy Sky News to ease fears over Murdoch influence*, FIN. TIMES (Apr. 3, 2018), <https://www.ft.com/content/756959ec-3705-11e8-8eee-e06bde01c544> [perma.cc/54RS-C78X].

130. See Ben Chapman, *Rupert Murdoch free to take full control of Sky, if he sells Sky News*, INDEPENDENT (June 5, 2018, 1:30 PM), <https://www.independent.co.uk/news/business/news/fox-sky-takeover-rupert-murdoch-culture-secretary-matt-hancock-news-a8384376.html> [https://perma.cc/MSH3-8SKU].

131. See *supra* Part I.B.

132. See Samuel Osborne, *Sky News could be sold off to Disney early in bid to push through sale of Sky to US media giant*, INDEPENDENT (Apr. 3, 2018, 6:30 AM), <https://www.independent.co.uk/news/business/news/sky-news-walt-disney-rupert-murdoch-21st-century-fox-acquisition-cma-a8285806.html> [https://perma.cc/3QW7-BK9K].

Divestiture of Sky News alone, however, was not a sufficient remedy. Separating Sky News from Sky would be an utterly pointless endeavor if Sky News did not have enough financial means to stay afloat. As a part of Sky plc, Sky News suffered annual losses between £15 million and £20 million a year.<sup>133</sup> Deprived of their parent company's backing, it would be extremely unlikely that Sky News would survive long on its own, burdened by such heavy losses. While another parent company, be it Disney or some other corporation, could be tempted to buy Sky News, they would certainly feel disincentivized to proceed knowing that they would have to take on such a tremendous amount of debt. The UK regulatory agencies needed to come up with a solution where they could implement safeguards so Sky News would not simply collapse after it had been divested from Sky. Indeed, according to Ofcom, if Sky News were to go belly up, it could "present risks to plurality equal to or greater than those presented by the [Fox] transaction itself," as one of the major alternative media outlets would cease to exist.<sup>134</sup>

In order to thwart this problem, Culture Secretary Matt Hancock decided that as an added precondition to governmental approval of the Twenty-First Century Fox and Sky deal, Fox would agree to underwrite the news agency's budget for a fifteen-year period.<sup>135</sup> If the Sky News budget fell below £100 million during any of the subsequent fifteen years post-deal, Twenty-First Century Fox would cover the difference.<sup>136</sup> This was a boon for Sky News, which had previously operated at a budget of around £90 million.<sup>137</sup> By including this stipulation with other conditions Fox had to follow in order to receive regulatory approval, the government essentially was able to ensure that Sky News would have a stable budget for the foreseeable future. Sky News, therefore, could continue to supply a varying, and in some ways, counterbalancing perspective from the one that Murdoch's companies would offer.

The last provision attached to the deal was that regardless of which corporation attained Sky News, its editorial independence would remain intact.<sup>138</sup> Whether Twenty-First Century Fox divested Sky News entirely or sold it to Disney, the procedure for separating Sky News from Sky plc would be the same. Fox would first create a new company called Newco, which would be comprised of Sky News and would serve as a subsidiary of Sky plc.<sup>139</sup> To preserve journalistic integrity, Newco would be chaired

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133. Mark Sweney, *Murdoch 'must increase Sky News budget to £100m'*, *GUARDIAN* (June 19, 2018, 12:07 PM), <https://www.theguardian.com/media/2018/jun/19/rupert-murdoch-must-increase-sky-news-budget-to-100m> [https://perma.cc/KH65-WB98].

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. See Georg Szalai, *U.K. Approves Fox's Sky Bid, Subject to Sale of Sky News, and Clears Comcast Offer*, *HOLLYWOOD REP.* (June 5, 2018, 6:07 AM PDT), <https://www.hollywoodreporter.com/news/uk-approves-foxs-sky-bid-subject-sale-sky-news-clears-comcast-offer-1115661> [https://perma.cc/3VUV-VVLN].

139. Freddy Mayhew, *Disney pledges to run Sky News service for 15 years backed by funding of at least £100m a year*, *PRESSGAZETTE* (June 19, 2018), <https://www.press>

solely by a board of independent directors and would be run by someone with “senior editorial and/or journalistic experience.”<sup>140</sup> At the time of divestiture or sale, Newco would then be separated from Twenty-First Century Fox, either going out on its own or being picked up by Disney.<sup>141</sup> When considering various procedures to protect Sky News, Hancock stated, “I need to be confident that the final undertakings ensure that Sky News remains financially viable over the long-term; is able to operate as a major U.K.-based news provider; and is able to take its editorial decisions independently, free from any potential outside influence.”<sup>142</sup> By forcing Sky News to be separate from Twenty-First Century Fox, finding a source that could financially back the company so it was on a level playing field with its competitors, and getting assurances that its journalistic independence would stay in place, Hancock achieved all of those objectives quite handily.

Of course, if a government decides to involve themselves in an M&A deal, one question that should arise is whether the government’s intervention unfairly restricts the rights of either corporations’ shareholders. A corporation, in theory, is meant to best serve the interests of its shareholders, but government-imposed limitations on M&A deals may mean that shareholders do not get to reap the full benefits that they expected to get when they first bought shares of that corporation.<sup>143</sup> Obviously, by dictating the necessary regulatory hurdles that Twenty-First Century Fox had to overcome to acquire controlling ownership in Sky, the UK government infringed to some extent upon Fox’s and Sky’s shareholders’ freedom. While those shareholders still would have gotten final say in approving the proposed transaction, the transaction itself was shaped in part by the government, rather than wholly by the corporations’ executives, who arguably were considerably more familiar with their own assets than any third-party regulatory agency.

Query, however, what it would look like if the UK government had allowed Twenty-First Century Fox to vie for Sky with no interference whatsoever. If Fox and Sky had come to an agreement free from any government influence, shareholders of those companies would have received a deal that better fit their desires as stockholders, but at what cost? A market too heavily strung in favor of one entity would hamper competition, which, as a consequence, would inhibit that market’s growth and create negative

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gazette.co.uk/disney-pledges-to-run-sky-news-service-for-15-years-backed-by-funding-of-at-least-100m-a-year/ [https://perma.cc/SR78-5QDP].

140. *Id.*

141. *Id.*

142. Szalai, *supra* note 138.

143. See *Reasons why most mergers destroy shareholder value*, MARTIN ROLL (Feb. 2014), <https://martinroll.com/resources/articles/strategy/reasons-why-most-mergers-destroy-shareholder-value/> [https://perma.cc/SZJ7-YEAA]. For an explanation on how increasing amounts of government regulatory reforms lead to only further reforms—a concept referred to as “reform loop”—see Matteo Gatti, *Upsetting Deals and Reform Loop: Can Companies and M&A Law in Europe Adapt to the Market for Corporate Control?*, 25 COLUM. J. EUR. L. 1, 10-12 (2019).



externalities.<sup>144</sup> While it may not always be in the *best* interests of certain shareholders in the short term, additional government scrutiny—when properly tailored to the situation at hand—creates an environment more conducive to maximizing *shareholder welfare*, which should be the ultimate goal of a corporation, instead of merely maximizing *market value*.<sup>145</sup> Here, while Fox shareholders had the potential to garner more profits by acquiring Sky in its entirety, they, along with the public as a whole, would suffer the adverse effects of having to rely on a potentially untrustworthy news outlet. Thus, when left having to choose between one of these two “evils”—(1) several shareholders temporarily losing some of their rights or (2) a single corporation having a definitive stranglehold on the news media market—there was little doubt as to what the correct answer was. Add in the sociopolitical incentive of wanting to steer clear of having a one-sided news media landscape,<sup>146</sup> and it became evident that the proper solution for the UK government was to allow the deal to go through but include stringent conditions that had to first be met.

That all being said, the fears that Murdoch would have supreme control over the British news industry simply never came to fruition, as another development that had been occurring contemporaneously in the financial world rendered the entire process moot. While Twenty-First Century Fox was circling around Sky, Disney was in the midst of finalizing a deal to acquire Twenty-First Century Fox.<sup>147</sup> This had enormous consequences, as it meant that Murdoch would no longer have control of Twenty-First Century Fox at all, which in turn meant that if Twenty-First Century Fox were to beat out Comcast and acquire Sky and Sky News, it would be under Disney’s umbrella, not Murdoch’s.<sup>148</sup> The impending crisis that had consumed many UK regulators’ minds had been averted. There was another matter, though, that needed to be addressed. As Comcast continued to spar against Fox for Sky, it became quite clear that neither side was anywhere near to giving a final, take-it-or-leave-it offer for the British media company.<sup>149</sup> Approaching nearly two years since Twenty-First Century Fox formally announced their intention to acquire Sky, there was still no

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144. See Michael Magill, Martine Quinzil & Jean-Charles Rochet, *A Theory of the Stakeholder Corporation* 83 *ECONOMETRICA* 1685, 1686 (2015).

145. Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value* 2 *J. L. FIN. & ACCT.* 247 (2017).

146. See *supra* text accompanying note 43.

147. See Joe Mayes & Gerry Smith, *Disney and Fox Are Merging. Why Is Sky Still in Play?*, *BLOOMBERG* (July 27, 2018, 12:01 AM), <https://www.bloomberg.com/news/articles/2018-07-27/disney-and-fox-are-merging-why-is-sky-still-in-play-quicktake> [https://perma.cc/C97L-6S5E] (last updated Sept. 21, 2018, 1:52 PM). The article includes a useful diagram depicting these developments. Disney and Comcast were familiar opponents, as Disney previously outbid Comcast for Twenty-First Century Fox.

148. See *id.*

149. See Ben Martin, *Comcast and Fox take \$34 billion battle for Britain’s Sky to the wire*, *REUTERS* (Sept. 21, 2018, 1:20 PM), <https://www.reuters.com/article/us-sky-plc-m-a-auction/comcast-and-fox-take-34-billion-battle-for-britains-sky-to-the-wire-idUSKCN1M12CV> [https://perma.cc/KP6Z-R8YK].

end in sight.<sup>150</sup> The UK government took it upon themselves to remedy this problem too.

## B. The UK Government's Handling of the Bidding War for Sky

September 2018 marked twenty-one months since Twenty-First Century Fox had initially reached an agreement to buy Sky.<sup>151</sup> As discussed *supra*, regulatory concerns greatly extended the process, which in turn gave other competitors, most notably Comcast, time to consider submitting higher offers for Sky.<sup>152</sup> The regulatory proceedings took so long that Disney had agreed to acquire Twenty-First Century Fox while Fox's deal with Sky remained in limbo.<sup>153</sup> The Disney-Fox deal would subsequently receive approval from the European Commission in November 2018.<sup>154</sup> Yet, for all intents and purposes relating to the Sky acquisition, come September, Disney and Fox were on the same team.<sup>155</sup> The UK government treated them essentially as one entity too, applying the "chain principle" as articulated in Rule 9 of the UK City Code on Takeovers and Mergers, requiring Disney, after acquiring Fox, to make a mandatory offer for Sky.<sup>156</sup>

Even with Disney being brought into the fold, it did not appear that the bidding for Sky would conclude anytime soon.<sup>157</sup> It became readily apparent that some kind of endpoint needed to be set. Without some cut-off date, there was a good chance that Comcast and the Disney-Fox team would continue to try to outbid the other. This would leave the shareholders of their respective corporations, the shareholders of Sky, and the business world as a whole with ongoing uncertainty, which would only stall

150. Chad Bray, *21st Century Fox Reaches \$14.8 Billion Deal for Remainder of Sky*, N.Y. TIMES (Dec. 15, 2016), <https://www.nytimes.com/2016/12/15/business/dealbook/21st-century-fox-reaches-14-8-billion-deal-for-remainder-of-sky.html?dlink=&module=inline> [<https://perma.cc/GLV9-NJPP>].

151. *Id.*

152. See *supra* Part III.A.

153. Brooks Barnes, *Disney Makes \$52.4 Billion Deal for 21st Century Fox in Big Bet on Streaming*, N.Y. TIMES (Dec. 14, 2017), [https://www.nytimes.com/2017/12/14/business/dealbook/disney-fox-deal.html?\\_r=1&module=inline](https://www.nytimes.com/2017/12/14/business/dealbook/disney-fox-deal.html?_r=1&module=inline) [<https://perma.cc/2R2Z-MDGR>].

154. Dawn C. Chmielewski & Dade Hayes, *European Commission Approves Disney's \$71 Billion Acquisition Of Fox, With Conditions*, DEADLINE (Nov. 6, 2018, 9:18 AM), <https://deadline.com/2018/11/european-commission-approves-disney-71-billion-acquisition-fox-conditions-1202496828/> [<https://perma.cc/NUJ5-F2KV>].

155. As such, when referencing them together, I shall call them the "Disney-Fox team" or "Disney-Fox" from this point forward.

156. See Roger Barron & Matthew Poxon, *Takeover Regulation in the U.K. - Bidding War for Sky plc Resolved by Rare Auction Process*, PAUL HASTINGS LLP (Oct. 9, 2018), <https://www.paulhastings.com/publications-items/details/?id=6953c06b-2334-6428-811c-ff00004cbded> [<https://perma.cc/X7Q2-8MT8>]; SLAUGHTER AND MAY, A GUIDE TO TAKEOVERS IN THE UNITED KINGDOM - NOVEMBER 2018, 38-39 (Nov. 2018), <https://www.slaughterandmay.com/media/39320/a-guide-to-takeovers-in-the-united-kingdom.pdf> [<https://perma.cc/6TXS-LTP9>].

157. See Dawn C. Chmielewski, *As Comcast Looks To Sky, Will Disney Keep Up The Fight?*, DEADLINE (July 19, 2018, 3:57 PM), <https://deadline.com/2018/07/comcast-turns-attention-sky-abandons-bid-fox-1202429670/> [<https://perma.cc/KF4V-ALAF>].

growth elsewhere. To reach a resolution, the UK government decided to get involved in the matter once more by setting up an auction process under the relatively unknown Rule 32.5 of the UK's City Code, a rarely used procedure which had never been invoked before for any deal remotely close to this magnitude.<sup>158</sup>

The rules for the auction were relatively straightforward. Entering the auction, Disney-Fox's most recent offer was £14 per share, or about \$32.5 billion, and Comcast's most recent offer was £14.75 per share, or \$34 billion.<sup>159</sup> The auction was broken up into three "rounds."<sup>160</sup> In the first round, only the Disney-Fox team, which had the lower offer coming in, could bid.<sup>161</sup> In the second round, Comcast could respond with a counterbid.<sup>162</sup> In the third and final round, both groups would submit offers that would be blind, that is, sealed from the other.<sup>163</sup> The entirety of the auction would run over the course of a single day, meaning that there would be a quick and definitive result.<sup>164</sup> Game theory certainly played a role here, as neither side in the first two rounds wanted to place a bid so high that they would be paying an exorbitant amount but at the same time they did not want to underbid and risk losing the deal.<sup>165</sup> Since the third

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158. See, e.g., *Sky takeover fight to be settled by rare auction*, RTÉ (Sept. 20, 2018, 12:54 PM), <https://www.rte.ie/news/business/2018/0920/994954-sky-auction/> <https://perma.cc/F68T-TPXSJ>; Ben Martin & Noor Zainab Hussain, *Rare auction showdown could decide fate of broadcaster Sky*, REUTERS (Sept. 20, 2018, 5:16 AM), <https://www.reuters.com/article/us-sky-ple-m-a-auction/rare-auction-showdown-could-decide-fate-of-broadcaster-sky-idUSKCN1M0190> [<https://perma.cc/JM4H-GQ5M>]; Charles Riley, *Comcast-Fox battle for Sky could end in a one-day auction on Saturday*, CNN (Sept. 20, 2018, 12:04 PM), <https://money.cnn.com/2018/09/20/media/sky-takeover-comcast-fox/index.html?iid=EL> [<https://perma.cc/WF5K-3S53>]; see also SLAUGHTER AND MAY, *supra* note 156, at 33.

159. Edmund Lee, *Comcast and Disney (Fox) Battle Again. This Time for British Broadcaster Sky*, N.Y. TIMES (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/business/dealbook/sky-auction-comcast-disney-fox.html> [<https://perma.cc/4XTU-QZHD>]. Lee's piece goes into great detail explaining the potential outcomes that could have occurred during the auction.

160. Stu Woo & Ben Dummett, *Comcast, Fox to Settle \$35 Billion Takeover Battle for Sky in Weekend Auction*, WALL ST. J. (Sept. 20, 2018, 7:27 PM), <https://www.wsj.com/articles/comcast-fox-to-settle-35-billion-takeover-battle-for-sky-in-weekend-auction-1537435073?ns=prod/accounts-wsj> [<https://perma.cc/YM5U-SU3A>].

161. *Id.*

162. *Id.*

163. *Id.*

164. Joe Mayes, David Hellier & Ruth David, *Sky's Big Day: Fox Faces Off to Comcast in Fight for Control*, BLOOMBERG (Sept. 22, 2018, 1:06 PM), <https://www.bloomberg.com/news/articles/2018-09-22/sky-s-big-day-fox-faces-off-to-comcast-in-battle-for-control> [<https://perma.cc/U4VK-C52V>]. The entire auction is believed to have lasted about seven hours.

165. See, e.g., Alex Sherman, *How an obscure British regulation called the 'chain principle' is changing Comcast's strategy around buying Fox and Sky*, CNBC (July 12, 2018, 1:12 PM), <https://www.cnbc.com/2018/07/12/how-an-obscure-british-regulation-called-the-chain-principle-is-chan.html> [<https://perma.cc/F5YD-2BNP>]; Jim Waterson, *Comcast outbids Rupert Murdoch's Fox to win control of Sky*, GUARDIAN (Sept. 22, 2018, 4:06 PM), <https://www.theguardian.com/business/2018/sep/22/comcast-outbids-rupert-murdoch-fox-to-win-control-of-sky> [<https://perma.cc/8W49-XPJ6>]; Stu Woo & Ben Dummett, *Game Theory Part of the Art of the Sky Deal*, WALL ST. J. (Sept. 21, 2018, 5:30 AM),

round was sealed, both sides would strategically have to anticipate how much the other might bid, and then surpass it. Given that the auction unfolded over a relatively short time span, it only added to the drama.<sup>166</sup>

Theatrics aside, the UK government in setting up the auction devised several measures which greatly simplified what so far had been an extremely complicated procedure with far too many variables at play. Firstly, the UK government created a closed universe, allowing only the Disney-Fox team and Comcast to bid as the auction proceeded; no other companies could get involved at the last moment, which would only stretch the process out further. The battle was between these two groups alone.<sup>167</sup> Secondly, the government offered a finite resolution: there would only be one winner, at which point the deal would start to be set in motion and society could begin to move on.<sup>168</sup> Thirdly, the government itself controlled the auction, making it unlikely that any possible shenanigans would occur from either bidding group or from anyone else.<sup>169</sup> With the stakes being this high, there was no room for subterfuge or any questionable tactics. In implementing these measures, the government found a delicate balance of giving a necessary and forceful push to the bidders to get the deal done while still promulgating the fundamental capitalistic ideology of whoever agrees to pay more wins. In all, the Takeover Panel, in their own words, “provide[d] an orderly framework for the resolution of this competitive situation.”<sup>170</sup>

When all was said and done, Comcast came out on top, submitting the highest offer at £17.28 (\$22.60) per share, and placing Sky’s value at £29.7 billion (\$38.8 billion).<sup>171</sup> Their offer greatly exceeded Disney-Fox’s, which

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<https://www.wsj.com/articles/blind-auction-complicates-bidding-for-sky-1537522201> [<https://perma.cc/TZR8-Z8NQ>].

166. See Hadas Gold, *The final battle for Sky is underway*, CNN (Sept. 21, 2018, 7:01 PM), <https://money.cnn.com/2018/09/21/media/sky-auction-comcast-fox-disney/index.html> [<https://perma.cc/AY2C-Q8GR>].

167. See Jim Waterson, *Sky takeover battle must go to auction, orders regulator*, GUARDIAN (Sept. 20, 2018, 12:00 PM), <https://www.theguardian.com/business/2018/sep/20/sky-takeover-battle-fox-comcast-auction-regulator> [<https://perma.cc/AY2C-Q8GR>]. There was the possibility that following the conclusion of the auction another corporation could get involved and make an offer. That being said, given the extremely short window of time available before Sky shareholders approved the auction winner’s bid, it would have been very difficult for any other corporation to make an offer, even if they wanted to.

168. See *id.*

169. See *id.*

170. *Id.*

171. Georg Szalai & Etan Vlessing, *Comcast Outbids Fox in Auction Battle for Sky*, HOLLYWOOD REP. (Sept. 22, 2018, 11:22 AM PDT), <https://www.hollywoodreporter.com/news/comcast-outbids-fox-auction-battle-sky-1140119> [<https://perma.cc/MEU9-XQ8T>]. The £29.7 billion (\$38.8 billion) figure was a valuation of the entire Sky corporation, including the 39% stake Murdoch owned. Paul Sandle & Lisa Richwine, *Rupert Murdoch’s Fox to sell Sky stake to Comcast*, REUTERS (Sept. 26, 2018, 10:33 AM), <https://www.reuters.com/article/us-sky-plc-m-a-comcast-fox/rupert-murdochs-fox-to-sell-sky-stake-to-comcast-idUSKCN1M620H> [<https://perma.cc/2HA6-V738>].

stood at £15.67 (\$20.50) per share.<sup>172</sup> Sky, including its news division, would be subsumed under Comcast, opening up new territory for the US-based media conglomerate.<sup>173</sup>

It was not a pure victory for Comcast, though. In many ways, it could be argued that Disney was the real winner. In a true form of irony, Disney, which felt wronged by Comcast's efforts to drive up the price for Twenty-First Century Fox, now in turn had driven up the price for Sky, putting a dent into their media rivals' coffers.<sup>174</sup> Indeed, in the immediate aftermath, many investors and analysts expressed concern over the deal, feeling that Comcast had "grossly overpaid" and that Sky would be "an albatross" moving forward.<sup>175</sup> In any event, the real winner was Sky CEO Jeremy Darroch, who, following the acquisition, sold his shares for £13.4 million, and then cashed in on previously awarded bonus shares.<sup>176</sup> Combined, he raked in around £38.2 million, or approximately \$50 million.<sup>177</sup> To top it off, he got to keep his job, as Comcast decided to retain him and his top executives, showing how much they respected what he and his colleagues had already achieved.<sup>178</sup>

Perhaps the most ironic part of all was that the nationwide (and arguably global) trepidation surrounding Twenty-First Century Fox's bid and the time and effort expended by the UK government in anticipation that such a deal would take place was all for nothing. Not only did Fox lose out on acquiring complete ownership of Sky, they subsequently sold their remaining 39% stake in Sky to Comcast, leaving them with no control, monetary

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172. Joe Mayes, David Hellier, Ruth David & Aaron Kirchfeld, *Seven-Hour Auction in London Leaves Comcast Poised to Buy Sky*, BLOOMBERG (Sept. 23, 2018, 3:41 AM), <https://www.bloomberg.com/news/articles/2018-09-23/seven-hour-shootout-in-london-leaves-comcast-poised-to-buy-sky> [<https://perma.cc/CPR7-RCNG>].

173. See Jim Waterson, *Comcast's £30bn bid for Sky: what does it mean?*, GUARDIAN (Sept. 23, 2018, 11:59 AM), <https://www.theguardian.com/media/2018/sep/23/comcast-30bn-bid-for-sky-what-does-it-mean> [<https://perma.cc/TLE6-72AZ>].

174. See Peter White & Dawn C. Chmielewski, *Comcast Triumphs Over Rupert Murdoch's 21st Century Fox In \$40B Sky Deal - Updated*, DEADLINE (Sept. 22, 2018, 2:15 PM), <https://deadline.com/2018/09/comcast-sky-deal-1202469545/> [<https://perma.cc/QF44-424H>]. For a look at the tension existing between Disney CEO Bob Iger and Comcast CEO Brian Roberts, see Dylan Byers, *PACIFIC: The Disney-Comcast War is Personal*, CNN (Apr. 26, 2018, 11:00 AM), <https://money.cnn.com/2018/04/26/technology/pacific-newsletter/index.html?iid=EL> [<https://perma.cc/R7SV-GHKV>].

175. Todd Spangler, *Comcast Stock Tanks Over Wall Street Concerns It Overpaid for Sky*, VARIETY (Sept. 24, 2018, 9:55 AM), <https://variety.com/2018/biz/news/comcast-stock-sky-deal-overpaid-1202954502/> [<https://perma.cc/R79B-FUEG>].

176. Joe Mays, *Sky CEO Takes Home \$50 Million in Comcast Deal Windfall*, BLOOMBERG (Oct. 12, 2018, 11:47 AM), <https://www.bloomberg.com/news/articles/2018-10-12/sky-ceo-darroch-takes-home-18-million-in-comcast-deal-windfall> [<https://perma.cc/Q7ZA-VXVR>].

177. *Id.*

178. Peter White, *Sky Boss Jeremy Darroch: "I Intend To Stick Around" Following Comcast Takeover*, DEADLINE (Oct. 25, 2018, 6:50 AM), <https://deadline.com/2018/10/sky-boss-jeremy-darroch-1202489342/> [<https://perma.cc/S9GT-5HXN>]; see also Georg Szalai, *How Comcast Plans to Leverage Its \$39 Billion Sky Acquisition in 2019*, HOLLYWOOD REP. (Dec. 28, 2018, 4:00 AM PST), <https://www.hollywoodreporter.com/news/how-comcast-plans-leverage-39b-sky-acquisition-2019-1171338> [<https://perma.cc/6T2V-BCAC>].

or otherwise, over Sky at all.<sup>179</sup> Sky News, furthermore, went to Comcast, which did not trigger regulatory concern.<sup>180</sup> As one British commentator adequately summarized, “Comcast’s victory . . . means that almost two years of government scrutiny of whether Murdoch should be allowed to take control of Sky were ultimately for nothing—although the lengthy process did give Comcast enough time to move in and gazump the Fox bid.”<sup>181</sup>

These two years were not a complete waste, however. By rummaging through the tangles of this complicated process and creating a solution that could largely please all the parties involved—the corporations and the public alike—the UK government set a precedent that they and other countries could subsequently follow if another mega merger or acquisition occurred between media companies. Despite involving themselves in various aspects of the Sky bids, the UK government’s stance can nevertheless be described as pro-business. It bears repeating that although Comcast winning the bidding war may have been the “safer” result from a regulatory standpoint,<sup>182</sup> the UK government gave its blessing to both the Comcast and Fox bids, just as long as Fox made a couple of concessions. Antitrust proponents also had to be pleased though, as the UK government did enough to ensure that there would still be media plurality following the transaction, regardless of who won.<sup>183</sup> By forging a middle path, the UK

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179. Javier E. David, *Fox will sell remaining Sky stake to Comcast for around \$15 billion*, CNBC (Sept. 26, 2018, 12:35 PM), <https://www.cnbc.com/2018/09/26/fox-will-sell-sky-stake-to-comcast.html> [https://perma.cc/4PUC-VLX8]. Comcast subsequently obtained enough publicly owned shares of Sky to trigger a compulsory acquisition, squeezing out the remaining minority shareholders, thereby fully acquiring the company. See Stewart Clarke, *Comcast Buys Over 30% of Sky on Open Market, Seeks More Before Takeover Deadline*, VARIETY (Sept. 25, 2018, 4:48 PM PT), <https://variety.com/2018/tv/global/comcast-buys-sky-shares-open-market-1202956344/> [https://perma.cc/Y3K-QS22]; *Comcast to buy remaining Sky shares after bid gets 95% acceptance*, STOCK MKT. WIRE (Oct. 12, 2018, 9:44 AM), <http://www.stockmarketwire.com/article/6165253/Comcast-to-buy-remaining-Sky-shares-after-bid-gets-95pct-acceptance.html> [https://perma.cc/5PRJ-96FW].

180. Culture Secretary Matt Hancock had previously ruled in May that he saw no need to subject Comcast to the same scrutiny as he had done with Twenty-First Century Fox, concluding that Comcast’s “proposed merger does not raise concerns in relation to public interest considerations which would meet the threshold for intervention.” Christopher Williams, *Boost for Comcast in Murdoch battle as Matt Hancock signals no probe of Sky bid*, TELEGRAPH (May 21, 2018, 4:48 PM), <https://www.telegraph.co.uk/business/2018/05/21/boost-comcast-murdoch-battle-matt-hancock-signals-no-probe-sky/> [https://perma.cc/manage/create?folder=27427-59256-73892].

181. Jim Waterson, *Rupert Murdoch’s Sky reign to end as Fox sells all shares to Comcast*, GUARDIAN (Sept. 26, 2018, 11:57 AM), <https://www.theguardian.com/media/2018/sep/26/rupert-murdochs-sky-reign-to-end-as-fox-sells-all-shares-to-comcast> [https://perma.cc/H76E-4RMW].

182. See Williams, *supra* note 180. As part of the deal, Comcast agreed that it would not acquire a UK newspaper for five years. Peter White, *Sky & Comcast Set Up Sky News Editorial Board As Per Terms Of Takeover*, DEADLINE (Dec. 6, 2018, 2:37 AM), <https://deadline.com/2018/12/sky-comcast-editorial-board-1202515003/> [https://perma.cc/4B6T-UMXR].

183. See, e.g., Foo Yun Chee, *Comcast gains unconditional EU antitrust approval to buy Sky*, REUTERS (June 15, 2018, 10:31 AM), <https://www.reuters.com/article/us-sky-plc-m-a-comcast-eu/comcast-gains-unconditional-eu-antitrust-approval-to-buy-sky-idUSKBN1J B1VW> [https://perma.cc/G5NQ-RZQ2]; Freddy Mayhew, *Comcast stands by pledge to*

government served everyday peoples' interests while at the same time furthering economic mobility and growth.

### C. A Model Which Others Should Follow

It is without question that other countries, both within Europe and in other parts of the world, should adopt the UK's strategy for handling multimedia M&A moving forward. Several suitable candidates stand out immediately, specifically, Germany and Italy. We then move outside of the European continent and take a look at Canada, and conclude by examining developing nations, with the African continent being the focal point of that exploration.

#### 1. *Germany*

The Germany-based corporation Bertelsmann poses a formidable presence in the multimedia M&A landscape.<sup>184</sup> Bertelsmann has relied on a pattern of entering into joint ventures with other companies, allowing the venture to grow, and then acquiring a greater percentage of shares in that venture.<sup>185</sup> Recently, for instance, Bertelsmann increased their stake in preeminent book publisher Penguin Random House, going from owning fifty-three percent to now holding seventy-five percent of its shares.<sup>186</sup> Bertelsmann has employed the same strategy with the Luxembourg-based European broadcaster RTL, which they now similarly own three-fourths of.<sup>187</sup> RTL Group itself is huge. Amongst its sixty television channels, it has a presence in Germany, France, the Netherlands, Belgium, Luxembourg, Croatia, Hungary, and Spain.<sup>188</sup> It also controls thirty radio stations in largely the same countries.<sup>189</sup> Given Bertelsmann's already substantial control of media outlets, any further acquisitions of midsize to large media corporations overlapping within these same territories should trigger additional scrutiny. This in fact would be a perfect example of where implementing a model similar to the UK's could be quite effective—allowing a deal of that sort to proceed, but perhaps instituting several checks to protect smaller entities from being entirely shut out.

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*maintain funding for Sky News over ten years and create new editorial board with safeguards for independence*, PRESS GAZETTE (Sept. 25, 2018), <https://www.press-gazette.co.uk/comcast-stands-by-pledge-to-maintain-funding-for-sky-news-over-ten-years-and-create-new-editorial-board-with-safeguards-for-independence/> [<https://perma.cc/KEA5-WLMN>].

184. For a map that displays Bertelsmann's presence across the world, see BERTELSMANN, <https://www.bertelsmann.com/meta/standorte/worldwide-presence.jsp> [<https://perma.cc/9UCD-36DW>] (last visited Feb. 7, 2020).

185. See Guy Chazan & David Bond, *Bertelsmann takes greater control of Penguin Random House*, FIN. TIMES (July 11, 2017), <https://www.ft.com/content/2bef8202-6602-11e7-8526-7b38dcaef614>.

186. *Id.*

187. *Id.*

188. *Bertelsmann at a Glance*, BERTELSMANN, <https://www.bertelsmann.com/company/company-profile/> [<https://perma.cc/72NJ-FV2H>] (last visited Apr. 2, 2019).

189. *Id.*

## 2. Italy

Italy is another country that is in need of significant reform when it comes to multimedia M&A. The country's former prime minister, Silvio Berlusconi, wields a gargantuan amount of influence over the nation's media outlets. Worth an estimated \$8 billion, Berlusconi is one of the richest people in all of Italy.<sup>190</sup> He owns a controlling share of Mediaset S.p.A., a media company which includes the country's three largest private television stations along with numerous radio stations.<sup>191</sup> Mediaset, in turn, is part of the holding company Fininvest, which is run by the Berlusconi family.<sup>192</sup> Among Fininvest's assets are Mondadori, Italy's largest publishing house, and the newspaper *il Giornale*.<sup>193</sup>

Although Berlusconi's media assets are substantial, what really instigates concern is how he can use these platforms to further his political goals. Berlusconi has been politically active for decades and has served as prime minister three separate times, for a combined duration of nine years.<sup>194</sup> He only missed out on becoming prime minister again in 2013 when his coalition lost by just over one percent of the vote.<sup>195</sup> Berlusconi sports anything but a clean record, as he has faced a plethora of legal disputes and has been mired in controversy.<sup>196</sup> His highlights—lowlights?—include being convicted of tax fraud in 2013 and subsequently being banned from serving political office.<sup>197</sup> If that were not enough, he has been involved in numerous sex scandals and was accused of having intercourse with an underage prostitute.<sup>198</sup>

While any one of these developments alone would serve as the nail in the coffin for other aspiring politicians, Berlusconi still remains relatively strong. Although he currently cannot hold a political seat, he still serves as the head of his political party, Forza Italia.<sup>199</sup> As such, he can utilize his media empire to spin stories to achieve his own political ends and to resuscitate his name in the public eye through a barrage of propaganda.<sup>200</sup>

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190. *Silvio Berlusconi: Italy's perpetual powerbroker*, BBC NEWS (Mar. 5, 2018), <https://www.bbc.com/news/world-europe-11981754> [https://perma.cc/5RWY-5QGY].

191. *Id.*

192. FININVEST, <http://www.finvest.it/en/holding/profile> [https://perma.cc/H9L8-WA7Q] (last visited Dec. 24, 2018); *Silvio Berlusconi: Italy's perpetual powerbroker*, *supra* note 190.

193. *Silvio Berlusconi: Italy's perpetual powerbroker*, *supra* note 190.

194. See Rachel Donadio, *Why Is Silvio Berlusconi Back (Again)?*, ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/international/archive/2018/02/silvio-berlusconi-italian-elections/554447/> [https://perma.cc/V8UF-S86L].

195. *Silvio Berlusconi: Italy's perpetual powerbroker*, *supra* note 190.

196. *See id.*

197. *Id.*

198. *Id.*

199. See Hilary Clarke, *Berlusconi: Facing a new crisis, Italians turn to an old warhorse*, CNN (Feb. 28, 2018, 7:32 AM), <https://www.cnn.com/2018/02/28/europe/silvio-berlusconi-italy-elections-intl/index.html> [https://perma.cc/U9JA-JW7G].

200. For a discussion on how Berlusconi has revived his image, see, e.g., Jason Horowitz, *Berlusconi Is Back. Again. This Time, as Italy's 'Nonno'*, N.Y. TIMES (Jan. 29, 2018), <https://www.nytimes.com/2018/01/29/world/europe/berlusconi-italy-election.html> [https://perma.cc/L6CJ-DXRZ]; Stephanie Kirchaessner, *He's back! How Silvio*



Unsurprisingly, Mediaset channels have paid very little attention to his scandals, largely avoiding them altogether, in what Italian television critic Aldo Grasso has called, “a triumph of reticence.”<sup>201</sup> With so much of the media at his disposal, Berlusconi has the means to shape himself in the minds of the public in whichever way he sees fit.

Given its current state of affairs, the Italian media landscape screams for regulatory intervention. Instituting checks on further M&A will not solve the problem that this country faces, but it could at least offer some relief to a citizenry who for far too long has been subjected to overwhelmingly one-sided news coverage.<sup>202</sup> Here, any further consolidation would mean that practically no alternative outlets would exist at all. Maintaining some avenues for independent journalism would at least make it possible for the electorate to seek out more accurate reporting, however hard it is to find.<sup>203</sup> These measures, though, are largely therapeutic, when what really is needed in Italy are prophylactic treatments—ones that prevent the problem *before* it occurs, rather than having to hastily come up with a remedy later. It seems, however, that Berlusconi has captured so much of the country’s media that the time for prophylaxis may have passed.<sup>204</sup> Italy is left, then, facing a series of conundrums, and it does not seem that any of its questions will be answered anytime soon.

### 3. *Canada*

Turning outside of Europe, Canada is another country that has a significant amount of multimedia consolidation.<sup>205</sup> Canada holds the distinc-

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*Berlusconi staged a political resurrection*, GUARDIAN (Jan. 27, 2018, 7:04 PM), <https://www.theguardian.com/world/2018/jan/28/silvio-berlusconi-march-election-matteo-renzi-five-star-movement> [https://perma.cc/QKV7-7CXD].

201. Grasso would go on to say that “if you followed the Italian television news bulletins, you would understand very little” about the scandals. John Hooper, *Silvio Berlusconi’s media reach*, GUARDIAN (Nov. 8, 2010, 2:00 PM), <https://www.theguardian.com/media/2010/nov/08/silvio-berlusconi-media> [https://perma.cc/9ET8-8P8J]. For a study on how Mediaset’s entertainment programming influenced the Italian public’s political attitudes and helped get Berlusconi elected prime minister in the first place, see Ruben Durante, Paolo Pinotti & Andrea Tesei, *The Political Legacy of Entertainment TV*, 109 AM. ECON. REV. 2497 (2019); see also Nikita Lalwani, *Junk television promoted populist politics long before Fox News and Trump*, WASH. POST (July 22, 2019, 6:00 AM), <https://www.washingtonpost.com/politics/2019/07/18/junk-television-promoted-populist-politics-long-before-fox-news-trump/> [https://perma.cc/CJ2Q-RVEP] (includes an interview with Andrea Tesei).

202. See generally ALESSANDRO D’ARMA, *MEDIA AND POLITICS IN CONTEMPORARY ITALY: FROM BERLUSCONI TO GRILLO* (2015).

203. See Jason Horowitz, *Journalist Who Spread Conspiracy Theories Will Oversee Italy’s State TV*, N.Y. TIMES (Sept. 28, 2018), <https://www.nytimes.com/2018/09/28/world/europe/italy-journalist-rai.html> [https://perma.cc/8CJ7-LFJD]; Filippo Trevisan, *In Italy, fake news helps populists and far-right triumph*, CONVERSATION (Mar. 5, 2018, 12:37 AM), <https://theconversation.com/in-italy-fake-news-helps-populists-and-far-right-triumph-92271> [https://perma.cc/M7LM-VZ4X].

204. See Anya Schiffrin, *Media Capture in the Digital Age*, PROJECT SYNDICATE (Aug. 17, 2017), <https://www.project-syndicate.org/commentary/media-capture-in-the-digital-age-by-anya-schiffrin-2017-08?barrier=accesspaylog> [https://perma.cc/4K74-WBGD].

205. See Daniel Tencer, *Concentration Of Media Ownership In Canada Worst In G8 For TV Industry*, Study Says, HUFFINGTON POST CANADA (Aug. 13, 2012, 10:56 AM), <https://>

tion of having the highest concentration of media ownership out of all the G8 countries, meaning that its cable and satellite market is overwhelmingly run by the same companies that create the content that is being broadcasted.<sup>206</sup> Vertical integration is a serious concern for this nation.<sup>207</sup> If that were not worrisome enough, Canada also has the single-highest concentration of TV audience, trailing only Italy.<sup>208</sup> Audience concentration only became further consolidated following Bell Media's attempted and later successful acquisition of Astral Media in the years of 2012 and 2013.<sup>209</sup> Given all these facts, Canada would certainly benefit from utilizing a procedure similar to the one enacted by the UK.

Interestingly enough, Canada already might have done just that with the Bell-Astral deal. The early stages of this bid in many ways would parallel the proposed Twenty-First Century Fox solicitation of Sky. In 2012, the Competition Bureau, a federal independent watchdog in Canada, made it abundantly clear that they were not comfortable with the Bell-Astral arrangement whatsoever.<sup>210</sup> If the deal had gone through with no alterations at all, Bell would have been in control of over one hundred radio stations and ninety television stations.<sup>211</sup> After a thorough review, the Canadian Radio-television and Telecommunications Commission (CRTC) concluded that the deal, as originally presented, drew far too many red flags, and decided to reject the proposal.<sup>212</sup>

The CRTC nevertheless gave its approval on the second go-around a year later, allowing Bell to obtain control of a 35.8% share of the nation's anglophone TV market coupled with a 22.6% share of the francophone TV market, as long as they met a wide range of conditions.<sup>213</sup> Most significantly, Bell agreed to sell Astral's holdings in eleven specialty channels and ten English-language radio stations in order to assuage fears that they and their parent company BCE, per CRTC chairman Jean-Pierre Blais, would "exert [their] market power to limit choice and competition."<sup>214</sup> Further-

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[www.huffingtonpost.ca/2012/08/13/concentration-media-ownership-canada\\_n\\_1773117.html](http://www.huffingtonpost.ca/2012/08/13/concentration-media-ownership-canada_n_1773117.html) [https://perma.cc/G365-DBNP].

206. *Id.*

207. See H.G. Watson, *Media concentration climbs in Canada as newsrooms shrink*, J-SOURCE (Feb. 29, 2016), <http://j-source.ca/article/media-concentration-climbs-in-canada-as-newsrooms-shrink/> [https://perma.cc/5TVZ-T8J7].

208. Tencer, *supra* note 205.

209. See *CRTC approves Bell-Astral merger*, CBC (June 27, 2013, 1:35 PM), <https://www.cbc.ca/news/business/crtc-approves-bell-astral-merger-1.1367433> [https://perma.cc/SNN7-T28D].

210. Steve Ladurantaye, *Competition Bureau flags Bell-Astral deal*, GLOBE & MAIL (Sept. 17, 2012), <https://www.theglobeandmail.com/globe-investor/competition-bureau-flags-bell-astral-deal/article4548430/> [https://perma.cc/7S54-C3HE].

211. *Id.*

212. *CRTC Rejects Bell-Astral Deal*, HUFFINGTON POST CAN. (Oct. 18, 2012, 10:12 AM), [https://www.huffingtonpost.ca/2012/10/18/crtc-rejects-bell-astral\\_n\\_1981939.html](https://www.huffingtonpost.ca/2012/10/18/crtc-rejects-bell-astral_n_1981939.html) [https://perma.cc/QX7F-7EPE].

213. Simon Houpt & Sean Silcoff, *Bell's bid for Astral approved*, GLOBE & MAIL (June 27, 2013), <https://www.theglobeandmail.com/report-on-business/bell-astral/article12861071/> [https://perma.cc/Y25W-Q87K] (last updated May 11, 2018).

214. *Id.*

more, Bell had to promise that they would not block access of their programming to other TV, satellite, and Internet distributors.<sup>215</sup> The end result here in lots of ways matched the UK government's regulatory signoff of Twenty-First Century Fox and Sky getting together, provided that Sky News was divested. Like the UK deal, the acquisition was allowed to proceed, but only after additional measures were implemented so that its effect on competitors would not be overly harmful. The CRTC even added a stipulation that was analogous to Fox's obligation of having to fund Sky News after its divestiture, requiring Bell to spend nearly \$250 million over a seven-year period on Canadian-produced programming to benefit the citizenry.<sup>216</sup> With all of these new safeguards attached, the deal looked considerably less ominous, and the CRTC allowed it to proceed.<sup>217</sup> When surveying the regulatory process surrounding this transaction, Bell-Astral arguably served as an adequate predecessor which may have guided the UK government as they were seeking solutions on how to best handle the Twenty-First Century Fox bid for Sky. With vertical integration still being an enormous issue in Canada, however, it would be in the Canadian government's best interest to continue to apply what they learned from both Bell-Astral and Fox-Sky moving forward.<sup>218</sup>

#### 4. *Developing Nations*

The global field, then, appears ripe for significant regulatory changes. Germany, Italy, and Canada all serve as examples where regulatory agencies should apply formulas similar to the one enacted by the United Kingdom, though their potential success in implementing those strategies may differ. As technological innovations continue to occur and digital media becomes more widespread, it is likely that a larger amount of countries will face the same challenge of multimedia consolidation.<sup>219</sup> Indeed, it will be particularly important to keep an eye on less developed countries, where it is considerably easier for one media mogul to swoop in and capture the entire market before any other corporations have the time to respond or are

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215. *Id.*

216. See Michael Lewis, *CRTC approves Bell/Astral deal with conditions*, STAR (June 27, 2013), [https://www.thestar.com/business/tech\\_news/2013/06/27/crtc\\_approves\\_bell\\_astral\\_deal\\_with\\_conditions.html](https://www.thestar.com/business/tech_news/2013/06/27/crtc_approves_bell_astral_deal_with_conditions.html) [https://perma.cc/9EXR-JXAS].

217. *See id.*

218. *See BCE's takeover of CTV approved*, CBC (Mar. 7, 2011, 4:58 PM), <https://www.cbc.ca/news/business/bce-s-takeover-of-ctv-approved-1.1002005> [https://perma.cc/G7QL-AUGF]; Dwayne Winseck, *Winners, losers and opportunities lost in the CRTC vertical-integration ruling*, GLOBE & MAIL (Sept. 22, 2011), <https://www.theglobeandmail.com/technology/digital-culture/winners-losers-and-opportunities-lost-in-the-crtc-vertical-integration-ruling/article627416/> [https://perma.cc/DN2V-MBF5] (last updated May 3, 2018).

219. *See 2019 Global Internet Report on the Future of the Internet, Concept note - May 2018*, INTERNET SOCIETY, <https://www.internetsociety.org/globalinternetreport/2018/concept-note/> [https://perma.cc/9AMS-83BB] (last visited Apr. 2, 2019); Saima Salim, *Global Internet Trends 2018: Almost 4.18 Billion Humans Are Online, 3.4 Billion Are Active Social Media Users*, DIGITAL INFO. WORLD (Oct. 19, 2018), <https://www.digitalinformationworld.com/2018/10/the-state-of-the-digital-world-in-q4-2018.html> [https://perma.cc/Y48H-JSYF].

willing to take the financial risk to invest heavily in a nascent business.<sup>220</sup>

Already several entrepreneurs have been able to stake enormous multimedia claims in developing countries. One of the most notable is Koos Bekker, who through Naspers, established a solid footing in television broadcasting services throughout large parts of Africa.<sup>221</sup> Reginald Mengi had also been tremendously successful, having owned some of the most prominent newspapers and television stations in East Africa, before his death in May 2019.<sup>222</sup> Africa will certainly be the continent to pay close attention to, as countries like South Africa, Nigeria, Kenya, Ghana, and Tanzania, who have already undergone substantial growth in the entertainment and media fields, are projected only to generate more revenue as the next decade unfolds.<sup>223</sup>

Irrespective of the country or continent, M&A deals will continue to be struck.<sup>224</sup> While the laws will certainly differ in various jurisdictions, the United Kingdom has created a feasible and sound model off of which other countries can base their future policies, if they so choose. Taking measures to curtail the cornering of the multimedia industry will allow more voices to be heard, which in turn will create a larger dissemination of healthy dialogue, commentary, and debate regarding the day's news, instead of it all being force-fed to the people via one—and more likely than not, biased—source. Although media tycoons may very well cry foul and make the argument that governments are unjustly forcing them to make concessions in order to have their proposed deals proceed, these handovers are fairly small yet they reap enormous societal benefits. The UK Model, as articulated in the stipulations accompanying Fox-Sky and the government-

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220. See generally Abida Eijaz & Rana Eijaz Ahmad, *Challenges of Media Globalization for Developing Countries*, INT'L J. BUS. & SOC. SCI., Oct. 2011, at 100.

221. See Tom Jackson, *The 10 Most Powerful African Media Moguls*, VENTURES AFRICA (Aug. 9, 2012), <http://venturesafrica.com/the-10-most-powerful-african-media-moguls/> [<https://perma.cc/HR2S-E5SR>]; MULTICHOICE, *About Us*, <https://www.multichoice.co.za/#about-us> [<https://perma.cc/W7UY-8GXU>] (last visited May 12, 2019); NASPERS, *About*, <https://www.naspers.com/about> [<https://perma.cc/X5NT-M54E>] (last visited May 12, 2019). Naspers recently announced that it will unbundle its TV broadcast provider MultiChoice Group, which shall have its own separate listing. Press Release, Naspers, Naspers announces completion of listing and unbundling of MultiChoice Group (Mar. 4, 2019), <https://www.naspers.com/news/naspers-announces-completion-of-listing-and-unbund> [<https://perma.cc/9VND-3RJE>].

222. See Jackson, *supra* note 221; *Reginald Mengi: Tanzania media mogul dies in Dubai*, BBC (May 2, 2019), <https://www.bbc.com/news/world-africa-48132181> [<https://perma.cc/R294-JBRP>].

223. See Press Release, PricewaterhouseCoopers LLP, Africa's entertainment and media industry enters dynamic new wave of convergence - 3.0 (Sept. 19, 2018), <https://pricewaterhousecoopers-pwc.africa-newsroom.com/press/africas-entertainment-and-media-industry-enters-dynamic-new-wave-of-convergence-30> [<https://perma.cc/XD3R-GYGX>].

224. See Stephen Grocer, *A Record \$2.5 Trillion in Mergers Were Announced in the First Half of 2018*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/business/dealbook/mergers-record-levels.html> [<https://perma.cc/MTS7-7FVD>]; Eric Platt, Javier Espinoza, Don Weinland & Emma Dunkley, *Global M&A activity hits new high*, FIN. TIMES (Sept. 27, 2018), <https://www.ft.com/content/b7e67ba4-c28f-11e8-95b1-d36dfef1b89a>.

run auction, paves the way for regulatory agencies in other countries to implement checks on multimedia M&A transactions, while still largely letting them go through. If other nations follow this framework, both the consumer and the provider profit, instead of the provider alone. The developed *and* developing portions of the world would be wise to follow the UK's lead in this regard.

## Conclusion

The story surrounding the acquisition of Sky certainly has more twists and turns than your average soap opera. Yet what can easily be lost in the fray of competing industry players, enemies turned allies, complex multi-layered corporate structures, and ever-changing stock prices, is the fundamental problem that has presented itself time and again through the centuries: whether the public could be assured that the information being disseminated to them adequately reflected the truth. Ever since the creation of the printing press, a countless number of people have exploited mass media to further their own messages, and in the process spun facts, articulated half-truths, and propagated downright lies. The concern surrounding Murdoch's solicitation of Sky News was no different—the technology might have changed, but the accompanying worries that the freedom of the press was being curtailed were the same exact fears that plagued the likes of John Milton and John Stuart Mill centuries prior; this was just the latest iteration.

What these past scholars and their modern counterparts realized, however, is that biases cannot altogether be eliminated, as they are inherent to human nature, and it is an accepted fact that a government, corporation, or other entity will to some extent utilize their control over their media outlets to best serve their own needs. What can be done, though, is to ensure that these views are not the only ones to which the public has access. By implementing certain safeguards and creating the opportunity for other reporters to have their say, no voice will ever become so deafening that it drowns out all the others. Instead, the consumer is given a healthy portioning of a variety of viewpoints and then is left to choose whichever they prefer.

All of these thoughts came into play and percolated in the minds of UK regulatory officials as they reviewed Twenty-First Century Fox's bid for Sky. While the UK government could have scrapped the deal in its entirety to protect media plurality, it took another route, giving the proposal its blessing while stating unequivocally that a higher level of regulatory scrutiny should be applied to multimedia M&A transactions by forcing the divestiture of Sky News. The government effectively found a way to protect the public's fundamental right to have a press that was not overly swayed by the personal and political leanings of CEOs while simultaneously promoting a corporation's freedom to make their own decisions and combine with another company as they pleased. This dual approach, along with a government-run auction, found a balance between antitrust and capitalistic

underpinnings that should work for any future multimedia megamergers that may arise, either in the UK or abroad. Despite Comcast's eventual victory, then, the government scrutiny surrounding Fox's bid was not "ultimately for nothing."<sup>225</sup> Rather, it constructed a solution that the public had been crying out for and gave the press its long sought-after protection.

As the technology, media, and telecommunications industries continue to expand across Europe and the rest of the greater world, the UK has provided an adequate map that other countries can turn to and either follow outright or at least mimic when mergers or acquisitions involving multimedia corporations occur in their jurisdictions. Whether another country can engineer a better design remains to be seen. Indeed, new forms of technology could quickly prompt nations to implement a different strategy—more companies adopting over-the-top (OTT) platforms, for instance, could very well cause new headaches for regulatory agencies.<sup>226</sup> Yet for the time being, the UK has given the rest of the world a viable model to follow. As a result, while a healthy amount of caution surrounding any consolidation attempts will remain, the concept of freedom of the press, through these measures, lives on.

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225. See *supra* text accompanying note 181.

226. See Alex Weprin, *With OTT On The Rise, Companies Look To Deals To Grow Globally*, MEDIAPOST (Sept. 25, 2018), <https://www.mediapost.com/publications/article/325531/with-ott-on-the-rise-companies-look-to-deals-to-g.html> [<https://perma.cc/29BP-UDSN>]; see also Jill Disis & Frank Pallotta, *Netflix is raising its subscription prices*, CNN (Jan. 15, 2019, 11:30 AM), <https://www.cnn.com/2019/01/15/media/netflix-raising-prices/index.html> [<https://perma.cc/5E7G-R5U2>]; Dade Hayes, *NBCU Chief Steve Burke Says New Streaming Service Could Reclaim 'The Office' From Netflix In 2021; Exec Reorg No Threat To Andy Lack*, DEADLINE (Jan. 14, 2019, 3:21 PM), <https://deadline.com/2019/01/nbcu-chief-steve-burke-says-new-streaming-service-could-reclaim-the-office-from-netflix-in-2021-exec-reorg-no-threat-to-andy-lack-1202535064/> [<https://perma.cc/U55X-YWNB>]; Amrita Khalid, *WarnerMedia may stream show debuts before they reach TV*, ENGADGET (May 13, 2019), <https://www.engadget.com/2019/05/13/warnermedia-may-stream-show-debuts-before-cable/> [<https://perma.cc/42Y9-P8GG>]; Daniel Roberts, *Disney says streaming is now its 'number one priority'*, YAHOO FIN. (Feb. 6, 2019), <https://finance.yahoo.com/news/disney-ott-streaming-is-now-number-one-priority-espn-plus-142004998.html> [<https://perma.cc/3V3E-KTKQ>]; Amol Sharma & Joe Flint, *The Great Streaming Battle Is Here. No One Is Safe.*, WALL ST. J. (Nov. 9, 2019), <https://www.wsj.com/articles/the-great-streaming-battle-is-here-no-one-is-safe-11573272000> [<https://perma.cc/8L5P-TGU5>]; Alex Sherman, *Disney+ isn't really the beginning of the streaming wars – the next year is just a warm-up*, CNBC (Nov. 16, 2019, 9:02 AM), <https://www.cnbc.com/2019/11/16/disney-plus-streaming-wars-just-warming-up.html> [<https://perma.cc/X4KI-NT9U>]; Cynthia Littleton & Elaine Low, *Adapt or Die: Why 2020 Will Be All About Entertainment's New Streaming Battleground*, VARIETY (Dec. 17, 2019), <https://www.yahoo.com/entertainment/adapt-die-why-2020-entertainment-140005900.html> [<https://perma.cc/ZUP2-59DY>].