

13 August 2012

Mr Murray Horton
Campaign against Foreign Control of Aotearoa
PO Box 2258
CHRISTCHURCH

BY EMAIL

Dear Mr Horton

SKY TELEVISION NETWORK LIMITED – GOOD CHARACTER ISSUES

1. I refer to your email of 18 May 2012 and your query:

“In light of the recent finding by a British Parliament Select Committee that Rupert Murdoch is “not fit” to lead a major international company (see below report), and in light of the fact that Murdoch’s News Ltd owns 43.65% of the shares of Sky Network Television Ltd, when is the OIO going to review, in terms of the Overseas Investment Act and accompanying Regulations, whether all of those in control of Sky are of good character and, if not, require Sky either to divest or Rupert Murdoch to relinquish any control of News Ltd?”

Background to the Sky acquisition

2. As you are no doubt aware, in May 2005, News Corporation obtained consent under the Overseas Investment Act 1973 (1973 Act) and the Overseas Investment Regulations 1995 (Regulations) to acquire up to 100% of the specified securities of Merger Company 2005 Limited (MergeCo). The consent was one of a number of regulatory approvals required in respect of a complex merger between MergeCo, Sky Television Network Limited and its 78.4% owner, Independent Newspaper Limited (INL). News Corporation, through a wholly owned subsidiary, held 43.7% of the shares of INL. MergeCo continued as the amalgamated entity and was renamed Sky Television Network Limited (Sky). It was anticipated that approximately 43.6% of the shares in Sky would be held by News Corporation as a result of the merger.
3. According to the Sky website, as at 31 July 2010, Nationwide News Pty Limited, an Australian registered subsidiary of News Corporation, holds 43.65% of the issued capital of Sky. (The consent granted to News Corporation extends to a subsidiary of News Corporation, such as Nationwide News Pty Limited).

4. Section 14A(2)(a) – (c) of the 1973 Act (which specified the criteria for consent to transactions not involving land) applied to the application for consent by News Corporation (being the overseas person undertaking the overseas investment). Section 14A(2) states (among other matters) that the Minister must grant the consent, if the Minister is satisfied that each person exercising control over the overseas person is of good character.
5. In support of the good character criterion, a statutory declaration from News Corporation's chief general counsel in Australia declaring that each of the individuals exercising control over News Corporation were of good character, was annexed to News Corporation's application for consent.

Review by the OIO of good character requirement

6. You have asked when the OIO is going to review, in terms of the Overseas Investment Act and accompanying regulations, whether all of those in control of Sky are of good character.
7. It was a condition of consent that the individuals exercising control over News Corporation must continue to meet the eligibility criteria in section 14A(2)(a) - (c) of the 1973 Act.
8. A statement dated 7 December 2007 was received from the Australian general counsel of News Corporation confirming the good character of Keith Rupert Murdoch. A further statutory declaration dated 28 October 2008 was received from News Corporation's general counsel. That statutory declaration declared that each of the individuals with control of News Corporation is of good character.

Divestment or relinquishment of control

9. You have also asked when the OIO is going to require Sky to divest or Rupert Murdoch to relinquish any control of News Corporation.
10. Section 18A of the 1973 Act provides that the High Court may give directions for the disposal of securities acquired in contravention of the 1995 regulations or a failure to comply with a condition of consent. We do not consider the recent finding by the British House of Commons Culture, Media and Sports Committee that Rupert Murdoch is "not fit" to lead a major international company equates to a contravention by News Corporation (or its subsidiary) of the 1973 Act or a failure to comply with a condition of consent. The disposal remedy is at the discretion of the Court, and in any event, there is a time limit of 2 years from the date of contravention or failure to comply with a condition of consent within which an application for disposal must be filed.

11. There is no ability under the Overseas Investment Act 1973 to compel Rupert Murdoch to relinquish his directorship or chairmanship of News Corporation. Section 18A only applies to property located in New Zealand, such as the securities acquired by News Corporation or its subsidiary (i.e. the Sky shares). We have already discussed some of the other difficulties relating to the taking of proceedings under section 18A. Please note that under equivalent provision (section 47 of the Overseas Investment Act 2005) there is no time limit attached to the application for disposal of property.
12. I trust this response clarifies the position for you.

Yours sincerely



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