

STEPHEN MAYNE SUBMISSION INTO OFCOM INQUIRY INTO PROPOSED SKY TAKEOVER

About the submitter

Stephen Mayne is an Australian journalist and transparency advocate who spent more than 7 years working for News Corp newspapers in Melbourne (Herald Sun) and Sydney (Daily Telegraph) as a reporter, gossip columnist, business editor and chief of staff up until 1999. In 2000 he founded www.crikey.com, Australia's best known independent ezine and since 1999 he has also been Australia's best known shareholder activist, asking questions at almost 450 AGMs and running for 48 public company boards. He is well known to Rupert Murdoch and his family, having travelled to Adelaide, Los Angeles and New York for 17 shareholder meetings of News Corp and 21st Century Fox since 1999. Collectively, this has involved an estimated 4 hours of public questioning of the leader of the world's most powerful family, all of which has informed this submission. Stephen is a former executive at the Australian Shareholders' Association where he was Policy and Engagement Co-ordinator from 2012 until 2014. He is currently a non-executive director of the ASA, but these views are his own. Stephen has also just finished a 4 year term as an elected councillor at the City of Melbourne, where he chaired the Finance and Governance committee and lead a reform program which transformed City of Melbourne from a relatively secretive council into Australia's most open and transparent local government authority.

Conditions on the proposed Sky takeover bid

Rupert Murdoch, 86, was born in Melbourne in 1931, a city which *The Economist Intelligence Unit* has voted "the world's most liveable" for the past 5 years. Rupert's grandparents and father, Sir Keith Murdoch, lived for many years in the well do suburb of Camberwell in Melbourne's leafy eastern suburbs. Ironically, I spent a year living in "Murdoch Street" Camberwell, named after the family, in 2004. Camberwell remains lovely but Rupert left Australia in the early 1970s and is now a US citizen, the world's longest serving public company CEO (term commenced in January 1953) and leader of the most powerful family in the world.

Having observed Rupert Murdoch closely for almost 30 years as an employee, commentator and shareholder activist, I'm strongly opposed to Fox's proposed Sky takeover, unless it can be used to negotiate some long overdue reforms inside the poorly governed Murdoch empire.

If allowing an unprecedented amount of media power to be vested in the hands of one foreign citizen with a dubious record, the UK government should insist on the following two shareholder-related conditions, both of which would be strongly supported by the independent shareholders of 21st Century Fox and News Corp.

- 1. 21st Century Fox and News Corp should be required to have a clear super-majority of independent directors and an independent non-executive chair.***
- 2. It should be a condition of regulatory approval that 21st Century Fox and News Corp move to a conventional UK-style capital structure where all shares on issue have equal voting rights.***

At the moment, excessive power is concentrated in the hands of the Murdoch family courtesy of a reverential hand-picked board at both News Corp and 21st Century Fox and a voting gerrymander

which delivers the Murdochs about 40% of the votes when they only own circa 14% of the total shares on issue.

Public investors actually own more than \$US50 billion worth of stock in companies controlled by the Murdoch family, but have virtually no say in the governance of the company, which has been shoddy for many years.

This News Corp dual class capital structure, first introduced in Australia in 1994, has allowed the Murdochs to continually disregard the interests and concerns of independent shareholders, as they consistently take the governance low road on a variety of issues, as is demonstrated by the following events and voting results at AGMs over the years.

Australian AGMs 1990-2004: Executive chairman Rupert Murdoch failed to put himself up for election, using the voting exemption which is available in Australia for CEOs, even though this is rarely taken by other Executive Chairs who face the normal 3 yearly election cycle.

1993: Rupert Murdoch announces super-voting proposal at AGM when family still owned 32% of a conventionally capitalised News Corp, but the push was defeated in Australia after a two month debate. See report in *The Age*

(http://newsstore.theage.com.au/apps/viewDocument.ac?page=1&sy=age&kw=murdoch+and+non-voting&pb=all ffx&dt=enterRange&dr=1month&sd=01%2F01%2F1993&ed=01%2F01%2F1995&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=adv&clsPage=1&docID=news931209_0173_0236)

1994: Dual class voting structure launched shortly after AGM with a 1-for-2 bonus issue of non-voting preferred stock. See report in *The Age*

(http://newsstore.theage.com.au/apps/viewDocument.ac?page=1&sy=age&kw=murdoch+and+non-voting&pb=all ffx&dt=enterRange&dr=1month&sd=01%2F01%2F1993&ed=01%2F01%2F1995&so=relevance&sf=text&sf=headline&rc=10&rm=200&sp=adv&clsPage=1&docID=news941104_01633392)

1999: Stephen Mayne attended his first News Corp AGM and asked 16 questions in a row over 40 minutes, a tolerance for debate and scrutiny which has not been repeated since. Rupert spoke seriously about potentially getting rid of page 3 girls in *The Sun*, but 18 years later continues to demean and objectify women on a daily basis.

2002: Stephen Mayne ran for the News Corp board at the AGM in Adelaide but his platform was completely censored and shareholders weren't even told the age of the challenging candidate in the notice of meeting. This was the worst censorship encountered in my 48 public company board tilts. So much for free speech! The only contested board election in News Corp's long history was conducted in a most unfair and biased manner. See report in *The Age* newspaper

(<http://www.theage.com.au/articles/2002/10/09/1034061251911.html>)

2003: News Corp shareholders voted down a proposal to issue options to directors because the Murdoch family was unable to vote their controlling stake. Faced with this unprecedented exercise of shareholder power, the Murdochs responded by immediately commencing plans to redomicile

the company to Delaware in the United States where shareholders have less rights. See report in Crikey (<https://www.crikey.com.au/2004/10/28/how-crikey-drove-rupert-offshore/>)

2004: The strong shareholder support for the Delaware move was leaked to his own papers the day before the shareholder meeting, in contrast to later meetings where proxy votes revealing big protest votes were kept hidden from shareholders on numerous occasions. See report in Crikey (<https://www.crikey.com.au/2004/10/27/crikey-takes-it-to-rupert-murdoch/>). Rival entrepreneur John Malone then swooped on an 18% stake in the voting stock as index selling opened up the register and the board responded by instituting an undemocratic poison pill which would be illegal in the UK. See report in Crikey when that scandal was finally resolved in 2006 after News Corp was sued by shareholders for breaking an undertaking to the Federal Court of Australia (<https://www.crikey.com.au/2006/04/07/news-corps-humiliating-poison-pill-retreat/>)

2005: First AGM in New York and Rupert Murdoch immediately moved to the US model of grouping all shareholder resolutions together, a tactic which minimises AGM debate. In Australia, the law requires a chairman to call for questions and display the proxies on each resolution separately.

2007: Stephen Mayne proposed a shareholder resolution to end News Corp's dual class voting structure which was supported by 60% of independent shareholders or voting stock worth about \$5 billion at the time. Despite this record protest, the board sticks by Rupert's undemocratic gerrymander. See Crikey report (<https://www.crikey.com.au/2007/10/22/mr-995-murdoch-makes-history-but-still-resists-democracy/>)

2008: Rupert refuses to call for any AGM questions in New York and breaks promise to have a shareholder information meeting in Adelaide each year. See Crikey (<https://www.crikey.com.au/2008/10/23/murdoch-gags-meeting-then-cans-adelaide-gabfest/>)

2010: remuneration report voting has been operating in Australia since 2004 but News Corp directors opposed a shareholder resolution calling for a "say on pay" in 2010. However, a clear majority of independent shareholders ignored the board's advice and supported the proposal, which is not surprising given the Murdoch men have extracted \$US606 million in salary from public companies over the past 18 years. See Crikey report (<https://www.crikey.com.au/2010/10/19/how-rupert-compares-himself-to-warren-buffett/>)

2011: record protests against News Corp directors after phone hacking scandal with 80% of neutral shareholders opposing re-election of James and Lachlan Murdoch. Release of proxy votes delayed until 72 hours after meeting. See Crikey report (<https://www.crikey.com.au/2011/10/25/record-protests-as-news-corp-shareholders-get-rankings-dead-right/>)

2014: Shareholder resolution proposing end to News Corp gerrymander only narrowly defeated (<https://www.crikey.com.au/2014/11/20/murdoch-and-the-saudi-prince-mayne-plots-the-scenarios/>) but board refuses to change.

2015: Without Rupert's voting support, 10 of the 12 directors would have been voted off the News Corp board, as shareholder react angrily to the latest poison pill technique designed to entrench Murdoch family control. See Crikey report (<https://www.crikey.com.au/2015/10/19/mayne-murdochs-packers-differ-again-on-family-power-games/>)

2016: The three Murdoch men on the News Corp and 21st Century Fox boards extracted a record \$A110 million in salaries for 2015-16, sparking a record remuneration report protest vote (https://www.crikey.com.au/2016/11/18/shareholders-protest-rupert-murdochs-ludicrous-pay-increase/#comments?utm_source=TractionNext&utm_medium=Email&utm_campaign=Insider-Subscribe-181116) of 63.7% from the independent shareholders of 21st Century Fox, but no apparent movement or concession from the board. The Murdoch men have taken \$US606 million in salary and bonuses over the past 18 years, a record haul from public companies extracted by a single controlling shareholder. And if News Corp and 21st Century Fox are truly operating separately, why were both 2016 AGMs held on the same day in the same theatre at Fox Studios in Los Angeles. With three Murdoch men common to both boards and a common controlling shareholder, they are still quite tightly connected, even if they have different sets of minority shareholders and assets.

How independent are Rupert's so-called independent directors?

At the Australian Shareholders' Association, we no longer classify directors as independent after 10 years of service. We have firm policies requiring a majority of independent directors, only one executive director and an independent non-executive chairman. Have a look at the 21st Century Fox board of directors here (<https://www.21cf.com/management/board-of-directors>)

21st Century Fox and News Corp are both on the record aspiring to have a super-majority of independent directors, which is more than 75%. They are a long way from achieving this. This is how we classify the various directors Rupert Murdoch has chosen to serve on his boards at News Corp and 21st Century Fox.

21st Century Fox

Non-independent directors

Rupert Murdoch: 86 year old executive chairman and CEO since January 1953

Lachlan Murdoch: executive co-chairman and eldest son of Rupert.

James Murdoch: CEO and second son of Rupert.

Chase Carey: currently vice chairman and a former chief operating officer who spent more than 20 years as a senior Murdoch executive.

David Devoe: long time finance director of News Corp.

Sir Rod Eddington: claimed to be the "lead independent director" but fails to qualify on two grounds: firstly, he is a former News Corp executive who was CEO of Ansett Airlines for three years and secondly, he has served on the board for 18 years, losing his independent status due to longevity.

Viet Dinh: no longer independent on two grounds: firstly, he is godfather to Lachlan Murdoch's son and secondly he has served on the board for 13 years, approving many dreadful governance moves along the way.

Jeffrey Ubben: any director with control over more than 5% of the voting stock is not regarded as independent. Mr Ubben was only granted a board seat after his activist fund Value-Act bought a 7% voting stake.

Genuinely independent 21st Century Fox directors

Delphine Arnaut: joined Fox board in June 2013 with no previous known dealings with the Murdochs or the company.

Tidjame Thiam: the CEO of Credit Suisse and a Fox director since November 2014.

Robert Silberman: A director of Fox since June 2013 with no clear previous connections to the business or the Murdochs.

James Breyer: professional director who joined Fox board in 2011.

Jacques Nasser: A director of Fox since June 2013 although independence could be challenged by his earlier 10 year stint on the BSkyB board, meaning there has now been a total of 14 years serving in board rooms at the pleasure of the Murdochs.

ANALYSING THE INDEPENDENCE OF THE NEWS CORP BOARD

The same situation applies at News Corp where the boards splits as follows in terms of independent and affiliated directors:

Non-independent News Corp directors

Rupert Murdoch: executive chairman

Lachlan Murdoch: co-executive chairman

James Murdoch: non-executive affiliated director

Robert Thompson: CEO News Corp

Joel Klein: paid more than \$10 million to serve as a senior Fox executive for four years until December 2015 after the unsuccessful Amplify education business was sold. Now serving as a non-executive director but certainly not independent.

Jose Maria Asnar: the former President of Spain, who backed the 2003 Iraq invasion which the Murdochs also championed, is into his 11th year serving the Murdochs as a director, so no longer classified as independent.

Natalie Bancroft: 10 years as a director and hand-picked by Rupert Murdoch to represent the Bancroft family after the Dow Jones sale when she had little commercial experience.

Peter Barnes: billed as the lead independent director but after serving the Murdochs as a director since 2004, is no longer classified as independent.

Independent directors of News Corp

Masroor Siddiqui: joined the News Corp board when it demerged from 21st Century Fox in June 2013 and has no known connection to the Murdochs.

Ana Paula Pessoa: joined the News Corp board when it demerged from 21st Century Fox in June 2013 and no known connection to the Murdochs.

Existing Sky board a better model

The existing 11 person Sky board (<https://corporate.sky.com/about-sky/our-management/our-board>) is much better governed as there are five insiders or associates of Fox – James Murdoch, Chase Carey, John Nallen, Andrew Griffith and Jeremy Darroch – but they are out-numbered by the 6 clear independent directors: Martin Gilbert, Tracy Clarke, Adine Grate, Andrew Sukawaty, Matthieu Piggase and Katrin Wehr-Seiter.

With just two out of 10 genuinely independent directors at News Corp and 5 out of 13 at 21st Century Fox, OfCom should insist on substantial board changes as a condition of approval of the Sky bid.

The existing Sky independent directors have performed well and would be a useful talent pool to tap into. Why not require the appointment of at least two of the existing Sky independent directors to the Fox board. With three Fox retirements such as Sir Rod Eddington, Chase Carey and David Devoe, this would then at least achieve a majority of genuinely independent directors.

Assessing Rupert Murdoch's character

A few years ago, the Australian Tax Office rated News Corp the riskiest major company in Australia when it came to aggressive tax practices.

This should come as no surprise given Rupert's long history of taking the governance low road.

Whether it was grovelling to the Chinese government, objectifying women on page 3 of *The Sun*, hacking phones, debauching the normal standards of journalism at Fox News, blindly backing the Iraq war, denying the reality of climate change or breaking the many promises made when pursuing takeovers, there is little to like about the world's most dubious and durable media mogul.

However, Britain has a proud and commendable record of welcoming foreign investment and practicing good corporate governance, so the obvious solution here is conditional approval for the bid provided the Murdoch family clean up their boards and capital structure as out-lined above.

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