



Public interest test for the  
proposed acquisition of Sky plc by  
21<sup>st</sup> Century Fox, Inc  
Ofcom's report to the Secretary of State

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# About this document

In March 2017, 21<sup>st</sup> Century Fox, Inc. notified the European Commission of its intention to buy the shares in Sky plc that it does not already own. Following the notification, the Secretary of State for Culture, Media and Sport asked Ofcom to review the effect of the proposed transaction on two considerations:

- **the plurality consideration:** whether the transaction may be expected to result in insufficient plurality in the number of persons with control of media enterprises in the UK; and
- **the broadcasting standards consideration:** whether Fox and Sky would remain genuinely committed to broadcasting standards following the transaction.

Ofcom is required to report by 20 June 2017 to the Secretary of State on the effect of the transaction on the public interest considerations. Our report contains advice and recommendations that may be relevant to the Secretary of State's decision as to whether to refer the transaction to the Competition and Markets Authority for further assessment.

Separately, we have an ongoing duty to be satisfied that the holders of broadcast licences are fit and proper to be licensed. Our findings on our fit and proper assessment will be published on our website.

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## Section 1

# Key findings, advice and recommendations

## Ofcom's role

- 1.1 The Secretary of State has asked Ofcom to report to her on the effect of the proposed acquisition by 21<sup>st</sup> Century Fox, Inc. ('Fox') of Sky plc ('Sky') on two public interest considerations: whether it may be expected to result in insufficient **plurality** in the number of persons with control of media enterprises in the UK, and whether there would continue to be a genuine commitment to **broadcasting standards** by Fox and Sky following the transaction.
- 1.2 Our role is to conduct a first stage investigation into the two public interest considerations and, on the basis of this investigation, to provide advice and recommendations that may be relevant to the Secretary of State's decision on whether to refer the transaction to the Competition and Markets Authority for further assessment. The threshold for a reference is low. The Secretary of State would need to hold a reasonable belief that it **may** be the case that the transaction **may** operate or **may** be expected to operate against the public interest.

## Key findings on media plurality

- 1.3 **We have considered the influence of the Murdoch Family Trust over Fox, Sky and News Corp.** While Fox and News Corp are separate companies, the Murdoch Family Trust has material influence across both companies.
- 1.4 **The proposed transaction would give the Murdoch Family Trust material influence over news providers with a significant presence on television, radio, printed newspapers and online.** It would bring the largest UK-wide newspaper group and one of only three significant providers of television news under the material influence of the Murdoch Family Trust. The transaction would also expand the reach of important online news sources influenced by the Murdoch Family Trust.
- 1.5 **The combined Fox/Sky and News Corp would have the third largest total reach of any news provider.** Across all platforms, news sources from Fox/Sky and News Corp would be used by three in ten adults (31%). This reach is lower than the BBC's (77%) or ITN's (39%) but significantly higher than that of the next biggest provider, Daily Mail and General Trust ('DMGT') (17%).
- 1.6 **Fox/Sky and News Corp would also account for a large share of the news that the public consume.** It would provide 10% of the UK's news across all platforms, using Ofcom's bespoke 'share of reference' metric, which measures the share of news consumption of individual providers. This share is behind that of the BBC (42%), in line with ITN (11%), and significantly ahead the next biggest provider, DMGT (4%).
- 1.7 **The use of online news is developing rapidly.** Evidence suggests that traditional news providers retain a strong position online. Sky News and The Sun may be more successful than most other news sources in attracting viewers and readers through 'online intermediaries' – websites that do not produce news, but direct people to it. The true reach and share of the merged parties may, therefore, be materially larger than survey data would suggest. This effect means that the merging parties could

plausibly have the second largest share of news consumption, behind the BBC, and ahead of ITN.

- 1.8 **Sky News is a trusted voice for those who use it.** We are more concerned about a transaction involving Sky News than we would be for a news provider with lower levels of trust.
- 1.9 **The transaction may increase the ability of members of the Murdoch Family Trust to influence the overall news agenda.** There is a risk that members of the Murdoch Family Trust may seek to coordinate the editorial policy of news outlets under their influence by omitting certain news stories, highlighting others or using the same commentators in their newspapers and on television news. This type of coordination could weaken the editorial independence of Sky News and so give members of the Murdoch Family Trust greater influence over public opinion.
- 1.10 **The transaction may increase the influence that members of the Murdoch Family Trust have over the political process.** Respondents to our invitation to comment argued that members of the Murdoch Family Trust already hold significant political influence, citing evidence that includes the Leveson Inquiry. The transaction could increase the perception among some politicians that members of the Murdoch Family Trust are more able to shape the editorial direction of Sky News, in order to favour one side of a political debate over another. Our assessment, therefore, is that there is a risk that the transaction may increase the political influence of members of the Murdoch Family Trust.

## Advice and recommendation on the plurality consideration

The transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, television, in print and online. **We consider that these concerns may justify a reference by the Secretary of State to the Competition and Markets Authority.**

## Key findings on broadcasting standards

- 1.11 **Fox's and Sky's compliance with Ofcom's Broadcasting Code is in line with that of comparable broadcasters.** The number of breaches of the Broadcasting Code by Fox is not exceptional when compared to Sky or similar broadcasters. Fox's compliance record in relation to overseas broadcast jurisdictions does not give cause for concern.
- 1.12 **We do, however, have significant concerns about the procedures that Fox News has in place to ensure compliance with our Broadcasting Code.** We found that Fox News did not have adequate procedures in place to ensure compliance with our rules. Fox has put in place a new compliance process for Fox News with effect from 15 May 2017.
- 1.13 **Corporate governance concerns do not raise issues about genuine commitment to broadcasting standards.** The Secretary of State also asked us to consider the effect of any failures of corporate governance on this public interest consideration. We have considered alleged corporate governance failures in the context of our separate assessment of whether Sky would remain fit and proper to hold broadcast licences following the transaction. We have concluded that the behaviours alleged at Fox News amount to significant corporate failure, however, the

overall evidence available to date does not provide a reasonable basis to conclude that if Sky were 100% owned and controlled by Fox, they would not be fit and proper to hold broadcast licences.

## Advice and recommendation on the broadcasting standards consideration

In light of Fox's and Sky's broadcast compliance records and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. **Therefore, we consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority.**

## Fox's proposed undertakings

- 1.14 **The Secretary of State may accept undertakings in lieu of a reference to the Competition and Markets Authority** if she considers them to be appropriate for the purpose of remedying, mitigating or preventing any adverse public interest effects which may be expected to result from the transaction.
- 1.15 **Fox has put forward undertakings, in lieu of any reference to the Competition and Markets Authority.** The stated intention is to ensure the continued editorial independence of Sky News by addressing our concerns about the potential influence of members of the Murdoch Family Trust over Sky News.
- 1.16 **Fox has said that it would establish an independent Sky News Editorial Board.** The Board would consist of a majority of independent members and would appoint the Head of Sky News. The latter would retain control over Sky News' editorial stance, the selection of news stories, and political comment and opinion appearing on the channel.
- 1.17 **Fox has said that there would be further safeguards against undue editorial influence.** Employees of Fox and members of the Murdoch Family Trust would be prohibited from influencing or attempting to influence the editorial choices made by the Head of Sky News. The Head of Sky News would have a duty to escalate any attempts to influence editorial decisions to the Sky News Editorial Board, which would in turn have a duty to report any such attempts to Ofcom.
- 1.18 **Fox proposed that the compliance arrangements at Sky News would be maintained.** This arrangement would mean any amendments to Sky News' current arrangements for complying with the Broadcasting Code could not be made without the prior approval of Ofcom.

- 1.19 **We recognise that behavioural undertakings can be difficult to monitor and enforce.** We have received a number of submissions raising concerns about the perceived ineffectiveness of past commitments in the context of the acquisition of The Times and Dow Jones. We consider that the proposed undertakings are more robust than what was made binding in those two cases, for instance in relation to reporting breaches.

**We consider that the proposed undertakings offered by Fox to maintain the editorial independence of Sky News mitigate the public interest concerns.** The Secretary of State may accept the proposed undertakings if she considers that they are appropriate to prevent, remedy or mitigate the adverse effects arising from the plurality concerns. We consider that there may be areas in which the proposed undertakings could be strengthened, for example, the ongoing arrangements for the appointment of the independent members of the Sky News Editorial Board and the period of Fox's commitment to maintaining its investment in Sky News.

## Overall advice and recommendations to the Secretary of State

In respect of the plurality consideration, the transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, television, in print and online. **We consider that the plurality concerns may justify the Secretary of State making a reference to the Competition and Markets Authority.**

In light of Fox's and Sky's broadcast compliance records, and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. **Therefore, we consider that there are no broadcasting standards concerns which may justify a reference by the Secretary of State to the Competition and Markets Authority.**

**We consider that the proposed undertakings offered by Fox to maintain the editorial independence of Sky News mitigate the media plurality concerns.** We recognise that behavioural undertakings can be difficult to monitor and enforce and that there are areas in which the proposed undertakings could be strengthened. The Secretary of State may accept the proposed undertakings if she considers that they are appropriate to prevent, remedy or mitigate the adverse effects arising from the plurality concerns.

## Section 2

# Executive summary

- 2.1 On 3 March 2017, Fox notified the European Commission of its intention to buy the shares in Sky that it does not already own. On 16 March 2017, the Secretary of State for Culture, Media and Sport asked Ofcom to review the effect of the transaction on two public interest considerations:
- 2.1.1 **the plurality consideration:** whether the transaction may be expected to result in insufficient plurality in the number of persons with control of media enterprises in the UK; and
  - 2.1.2 **the broadcasting standards consideration:** whether Fox and Sky would remain genuinely committed to broadcasting standards following the transaction.
- 2.2 Our role is to conduct a first stage investigation into the two public interest considerations and, on the basis of this investigation, to provide advice and recommendations that may be relevant to the Secretary of State's decision on whether to refer the transaction to the Competition and Markets Authority for further assessment. The threshold for a reference is low. The Secretary of State would need to hold a reasonable belief that it **may** be the case that the transaction **may** operate or **may** be expected to operate against the public interest.

## Our advice and recommendations have been informed by evidence and analysis

- 2.3 Our invitation to comment<sup>1</sup> received 51,555 responses. Fox also made an initial submission explaining why it believes the transaction would not operate against the public interest. We have also met with Fox, Sky and a range of other interested parties. We have considered these representations as part of our analysis.
- 2.4 Our report is also informed by responses to information requests made to the merging parties, News Corp and its subsidiary News Group Newspapers Ltd, and to the largest commercial radio groups. We have drawn on a range of metrics, including recognised industry sources, our News Consumption Survey (which explores people's use of, and attitudes towards, different news sources), and wider evidence, including findings from the Leveson Inquiry and academic research.

## We have assessed Fox, Sky and News Corp as a single entity

- 2.5 The Murdoch Family Trust (alongside other small interests associated with Rupert Murdoch) owns 38.9% of the voting shares in Fox and 39.4% of the voting shares in News Corp. This position gives it material influence over the policy direction of both companies and their subsidiaries. Members of the Murdoch family also hold senior

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<sup>1</sup> Ofcom, (2017). *Invitation to comment for public interest test on the proposed acquisition of Sky plc by Twenty-First Century Fox, Inc.*

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/98708/Invitation-to-comment.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/98708/Invitation-to-comment.pdf).

executive positions at both Fox and News Corp.<sup>2</sup> Following the transaction, Sky will be a wholly owned subsidiary of Fox. Given the ability of the Murdoch Family Trust to influence the policy of each of Fox, Sky and News Corp following the transaction, we have assessed them together for the purposes of the public interest considerations. This approach is consistent with the Enterprise Act provisions on common control.<sup>3</sup>

## Plurality is important for a well-functioning democracy

- 2.6 A plurality of media providers contributes to a well-functioning democracy through:
- 2.6.1 informed citizens, who are able to access and consume a wide range of viewpoints across television, radio, online and print media from a variety of media organisations; and
  - 2.6.2 preventing too much influence over the political process being exercised by any one media owner.<sup>4</sup>
- 2.7 In the UK, news and current affairs is provided by a number of providers including commercial organisations and those fulfilling public service obligations. The BBC occupies a particularly important place in the UK news market. It provides dedicated news and current affairs services such as the BBC News television channel and Radio 5 Live, bulletins on BBC television and radio channels, and online content including [bbc.co.uk](http://bbc.co.uk).
- 2.8 The BBC has, for some time, been the largest news provider in the UK. Across all platforms, 77% of adults use any one of the BBC's services for news and the BBC's news services reach nearly twice the audience as ITN, the next biggest provider. Our News Consumption Survey indicates that the BBC is the single most important source of news for 49% of news users, which is a small decline from 53% in 2013 but significantly larger than the next provider (ITN: 12%).
- 2.9 The merging parties are also important providers of news and current affairs:
- 2.9.1 Sky provides Sky News – a dedicated news channel - to major television platforms in the UK. Sky News was established in 1989 and is the only 24-hour dedicated commercial news channel aimed at UK viewers, with a reach of 9%.<sup>5</sup>
  - 2.9.2 In the UK, Fox provides Fox News, a 24-hour news channel covering US and international news. It is aimed at the US market, and viewership in the UK is small, with an average weekly reach of 0.4% of adults and an average of 2,000 viewers across the day.<sup>6</sup>
  - 2.9.3 News Corp publishes broadsheet titles The Times and The Sunday Times, and tabloid titles The Sun, The Sun on Sunday and The Scottish Sun. It

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<sup>2</sup> James Murdoch is Chairman of Sky, Chief Executive Officer of Fox and a Director of News Corp. Rupert Murdoch is Executive Chairman of Fox and Executive Chairman of News Corp. Lachlan Murdoch is Executive Chairman of Fox and Co-Chairman of News Corp.

<sup>3</sup> Section 26 of the Enterprise Act 2002.

<sup>4</sup> Ofcom, 2015. *Measurement Framework for Media Plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport*. [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

<sup>5</sup> BARB. See Annex 3 for more detail.

<sup>6</sup> BARB.

also owns Wireless Group, which operates radio stations such as talkSPORT and Virgin Radio.

## The transaction would give the Murdoch Family Trust influence over significant news outlets across television, radio, print and online

2.10 Following the transaction, members of the Murdoch Family Trust would have material influence over news providers with significant presence across television, radio, print and online:

2.10.1 **Television:** At a wholesale level<sup>7</sup>, the BBC, ITN and Sky News are the only television news providers used for news by more than 1% of adults.<sup>8</sup> Sky News is watched by 9% of adults each week and accounts for 7% of television news viewing.<sup>9</sup> Our News Consumption Survey suggests Sky News is the fourth most used news source across television, radio, printed newspapers and online.

2.10.2 **Printed newspapers:** News Corp has the widest UK-wide readership of any newspaper group; its combined titles are read by 15% of adults.<sup>10</sup> The Sun is the most popular printed newspaper, read by 7% of adults.<sup>11</sup>

2.10.3 **Radio:** Five wholesale radio providers<sup>12</sup> are used by more than 1% of adults<sup>13</sup>: the BBC, Global, Bauer, Wireless Group (owned by News Corp), and Independent Radio News (IRN). IRN is a wholesale supplier of news to commercial radio stations. Sky is the current news producer for IRN.<sup>14</sup>

2.10.4 **Online:** 70% of internet users use either The Sun or Sky News online.<sup>15</sup> Following the transaction, the Murdoch Family Trust would therefore have material influence over news providers with a combined reach second only to that of the BBC. The Sun has the third highest reach among news websites (64% of people who use the internet) and Sky News is used by 20% of people who use the internet.<sup>16</sup>

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<sup>7</sup> We distinguish between retail news provision - the individual title or brand of each news source that provides content to the user (e.g. ITV News) - and wholesale news provision - the supply and production of the news for a retail news source (e.g. ITN).

<sup>8</sup> BARB. See Section 6.

<sup>9</sup> *ibid.*

<sup>10</sup> NRS, any UK-wide newspaper, 7-day Average Issue Readership, 2016.

<sup>11</sup> NRS, any UK-wide newspaper, 6-day Average Issue Readership, 2016. We have chosen a 6-day average issue readership for individual UK-wide titles as this is the industry standard.

<sup>12</sup> RAJAR. See Section 4 for more detail.

<sup>13</sup> This figure is all radio listening. The industry measure, RAJAR, does not split out listening to news and current affairs only. See Annex 3 for more details.

<sup>14</sup> See Section 6 for a more detailed discussion of editorial control of radio news at a wholesale level.

<sup>15</sup> comScore.

<sup>16</sup> comScore.

## **Following the transaction, the combined Fox/Sky and News Corp would be one of the largest cross-platform news providers**

- 2.11 Following the transaction, news sources from Fox/Sky and News Corp would be used by three in ten adults (31%).<sup>17</sup> This reach is lower than the BBC's (77%) and ITN's (39%) but significantly higher than that of the Daily Mail and General Trust (DMGT) (17%), the next biggest provider.<sup>18</sup>
- 2.12 To measure the consumption of a news provider across all four platforms, we use a bespoke metric called 'share of reference'.<sup>19</sup> Sky and News Corp have the third and sixth largest wholesale share of reference respectively. Following the transaction, Fox/Sky and News Corp would become one of the largest news providers with a share of reference of 10%, behind the BBC (42%), in line with ITN (11%), but significantly ahead of the next biggest provider, DMGT (4%).
- 2.13 However, this data may understate the importance of Fox/Sky and News Corp. There is a commercial need for ITN to reflect the preferred style, tone and editorial approach of the retail news providers to which it provides news under contract (ITV, Channel 4 and Channel 5). Fox/Sky and News Corp may have a stronger voice than ITN despite comparable share of references.

## **Use of online news is developing rapidly but traditional providers, including The Sun and Sky News, retain a strong position online**

- 2.14 The growth of the internet has brought about significant change in the provision of news and current affairs. A wide range of news providers, offering diverse viewpoints, is available online. While intermediaries – search engines, social media sites and news aggregators – play a limited role in news production, they help people discover content by drawing attention to different sources. These different sources include news stories written by journalists, as well as direct engagement with the public by commentators and politicians. These trends have the potential to increase news consumption and strengthen plurality by reducing the impact of any one media owner.
- 2.15 The online news market is still evolving, and we recognise the potential for this to bring about significant changes in the consumption and impact of traditional news providers in the future. We are aware of the discussion suggesting that print newspapers had a reduced influence, and that social media had a greater influence (especially among young people), in the General Election 2017. It is in our view too early to make a definitive judgement.
- 2.16 Some respondents<sup>20</sup> to our invitation to comment noted that expanding online news has increased funding pressures on traditional providers, particularly newspapers. While there has been some growth in the digital revenues of the newspaper brands, this has failed to offset declining print revenues by a significant margin, and these

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<sup>17</sup> At a wholesale level, among adults who consume news on any of the four platforms.

<sup>18</sup> Ofcom News Consumption Survey 2016. These figures are not directly comparable with figures derived from industry sources due to methodological differences. See Annex 3 for more detail.

<sup>19</sup> Share of reference is calculated by asking people which news sources they use and the frequency with which they use them. See Section 3 for more detailed discussion of share of reference.

<sup>20</sup> [redacted]; the Rt Hon Ed Miliband MP, the Rt Hon Kenneth Clarke MP, the Rt Hon Sir Vince Cable MP and the Rt Hon Lord Falconer of Thoroton ('Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer'); and LSE Media Policy Project.

challenges are weakening the viability of some local and national titles and, therefore, of plurality.

- 2.17 These developments have coincided with a decline in news consumption through traditional formats. Television remains the most popular platform for news but viewing has declined from 78% to 69% of adults since 2013.<sup>21</sup> Radio is used by 33% of adults for news, compared to 35% in 2013.<sup>22</sup> Printed newspaper circulation fell by 35% between 2010 and 2016.<sup>23</sup>
- 2.18 At the same time, traditional news providers have established themselves online through their own websites, apps, and content hosted by intermediaries. While online only news sources have emerged, the evidence suggests that most online news consumption is to traditional news providers. We believe that the rise in consumption of news online is unlikely at this stage to have materially reduced the strength of traditional news sources' voice.

### **Sky News and The Sun may receive a relatively high share of consumption through online intermediaries**

- 2.19 A complicating factor in understanding consumption of online news is the role of online intermediaries. The evidence does not provide for a robust analysis of exactly which news sources people are consuming through intermediaries.
- 2.20 Our analysis suggests that Sky News and The Sun may receive a disproportionate amount of consumption through intermediaries, relative to their reach and share of reference. This analysis is supported by data from Sky and News Corp, which show high levels of consumption of their content through third-party platforms, for example Facebook Instant Articles or Snapchat.
- 2.21 The 'true' reach and share of reference of the merged parties may therefore be materially larger than indicated by the metrics in the News Consumption Survey. While this may also be true of other news organisations, we believe that this effect may be greater for the merging parties than for others. It is possible that the merging parties have in fact the second largest share of reference ahead of ITN; the BBC would remain in first place. However, given the limitations of online measurement, we are unable to draw firm conclusions.

### **Sky News is a trusted voice – on a par with the BBC**

- 2.22 The metrics we use to understand the relative impact of different news sources indicate that Sky News is a trusted news source. Levels of trust and perceptions of impartiality are broadly in line with that of the public service broadcasters. Therefore, we are more concerned about a transaction involving Sky News than we would be about a less well regarded news provider.
- 2.23 The Times and The Sunday Times are also considered important sources of news by 48% of their readers, and are considered trustworthy by 57%. By contrast, The Sun and The Sun on Sunday are rated much lower, with around a third of readers considering them important and trustworthy.<sup>24</sup> As we explain below, our assessment

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<sup>21</sup> Ofcom News Consumption Survey 2016.

<sup>22</sup> *ibid.*

<sup>23</sup> Audit Bureau of Circulation. National daily titles only. January-June 2010 compared to July-December 2016.

<sup>24</sup> Ofcom News Consumption Survey 2016.

of wider contextual factors suggests that the influence of newspapers may extend beyond the direct impact on readers.

## **We have considered qualitative evidence as well as data**

- 2.24 Quantitative data help us to understand the range of viewpoints available to, and absorbed, by the public. But this assessment does not on its own show how far any one media owner influences public opinion or the political process. Qualitative factors are therefore important to gain a full picture of plurality.

### **The transaction may increase the ability of members of the Murdoch Family Trust to influence the overall news agenda**

- 2.25 Analysing how the news agenda is shaped is not straightforward. However, evidence suggests newspapers may have greater influence over public opinion than consumption metrics alone might suggest, through the ability to set the wider news agenda.
- 2.26 A study by Cardiff University<sup>25</sup> looked at the relationship between newspaper agenda setting and television news during the General Election 2015. It suggests that, across the UK's main television news channels<sup>26</sup>, over 60% of election related items in news bulletins had previously appeared in a newspaper.
- 2.27 Of these, around 23% originated from News Corp titles, a greater proportion than from any other newspaper group. While the study does not provide conclusive evidence, the research suggests that News Corp's influence over public opinion may go beyond its circulation figures. We recognise that it is too early to say whether a similar analysis of the General Election 2017 might deviate from these results.
- 2.28 News Corp's potential influence over the wider news agenda could be strengthened further by the transaction. If the Murdoch Family Trust is able to coordinate the editorial policy of news outlets under its influence, including Sky News, it may be able to amplify the editorial position adopted by News Corp titles, for instance, by giving greater airtime to news stories appearing in those titles. This increased prominence for a particular editorial line may allow members of the Murdoch Family Trust to increase their influence over public opinion.

### **The transaction may increase the influence of members of the Murdoch Family Trust over the political process**

- 2.29 Many respondents<sup>27</sup> to our invitation to comment argued that members of the Murdoch Family Trust already have too much influence over the political process.
- 2.30 Respondents pointed to the findings of Lord Justice Leveson's 2012 inquiry into the culture, practices and ethics of the press, which concluded that:

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<sup>25</sup> Cushion, Kilby, Thomas, Morani & Sambrook, (April 2016). *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK General Election campaign*.

<sup>26</sup> BBC, ITV, Channel 4, Channel 5 and Sky News.

<sup>27</sup> [redacted]; Avaaz / Media Matters for America; 38 Degrees (as part of its template for public submissions); Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; Robin Gill; [redacted]; [redacted]; and many individual members of the public.

- 2.30.1 *“All the politicians that gave evidence before the Inquiry said that Mr [Rupert] Murdoch exercised immense power and that this was almost palpable in their relations with him.”*
- 2.30.2 *“In their discussions with him, whether directly or by proxy, politicians knew that the prize was personal and political support in his mass circulation newspapers. The value or effect of such support may have been exaggerated, but it has been treated as having real political value nonetheless.”<sup>28</sup>*
- 2.31 Respondents also cited the number of meetings between News Corp executives and the Prime Minister, Chancellor of the Exchequer and Culture Secretary between April 2015 and September 2016 as evidence of influence.
- 2.32 The strength of these arguments is difficult to judge. Frequency of meetings is clearly only a proxy for influence. Our assessment is that on balance there is a risk the transaction may increase the political influence of members of the Murdoch Family Trust. The fact of the transaction could strengthen the perception among some politicians that members of the Murdoch Family Trust are more able to shape the editorial direction of Sky News to favour one side of a political debate over another.

### **Internal plurality cannot allay our concerns about external plurality in the wider news market**

- 2.33 Internal plurality refers to the range of voices within a news organisation or group of organisations under the common control of one owner. If a range of voices and opinions is present within the same media outlet - and there are strong protections in place – there may be less concern about reduced plurality in the wider news market. Plurality concerns might therefore be mitigated if Sky News remains editorially independent from other news outlets under the influence of the Murdoch Family Trust.
- 2.34 In its initial submission, Fox indicated that Sky News and News Corp would remain under the ownership of separate companies with separate Boards and shareholders, having no involvement in the running of each other’s affairs. Fox argued that there was no rationale for significant operational integration of Sky News and News Corp. Fox added that the transaction would not result in the Murdoch Family Trust influencing Sky News’ editorial agenda because of the requirements of the Broadcasting Code<sup>29</sup>, the culture of the Sky News newsroom, and UK audience expectations of impartial news.
- 2.35 However, a number of submissions argued that<sup>30</sup> the transaction would indeed lead members of the Murdoch Family Trust to seek to influence the editorial approach of

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<sup>28</sup> The Leveson Inquiry into the culture, practices and ethics of the press, (November 2012).

<http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp>

<sup>29</sup> The Broadcasting Code contains rules around editorial standards (including due impartiality, due accuracy and misleading content), sponsorship, product placement and fairness and privacy. All television and radio broadcasters holding a broadcast licence must comply with the Broadcasting Code.

<sup>30</sup> The Campaign for Press and Broadcasting Freedom; [§]; Avaaz / Media Matters for America; [§]; [§]; Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; Alaphia Zoyab; Media Reform Coalition; and members of the public.

Sky News. The submissions pointed to public statements<sup>31</sup> from former senior editorial staff at News Corp as evidence that members of the Murdoch Family Trust already have editorial influence at News Corp and Fox. Respondents expressed concern that this could be replicated at Sky.

- 2.36 The Broadcasting Code offers some safeguards against the ability of Sky News to align itself with the editorial position of other news outlets under the influence of the Murdoch Family Trust. But these safeguards are not absolute. More subtle attempts to influence editorial policy, such as the choice of news stories, or of commentators whose views align with the Murdoch Family Trust, could in practice be difficult to detect. In addition, the Broadcasting Code does not apply to online content. As such, the Broadcasting Code does not provide a guarantee against greater coordination of news sources under the influence of the Murdoch Family Trust.
- 2.37 The expectations of Sky News' audience, and the culture of its newsroom are not sufficient to reassure us that an independent Sky News voice would continue after the transaction. We do not therefore believe it is possible to rely on internal plurality to mitigate our concerns about the transaction.

### **These concerns may justify a reference by the Secretary of State to the Competition and Markets Authority**

- 2.38 The transaction would bring together under the material influence of the Murdoch Family Trust important news providers on all four platforms, including the largest UK-wide newspaper group and one of only three major producers of television news. Between them, these providers would account for a large share of the news consumed by the UK public.
- 2.39 We have identified a risk that the transaction might allow news providers under the influence of members of the Murdoch Family Trust to have greater influence over public opinion, and to extend the influence of members of the Murdoch Family Trust over the political process. This could be done by choosing news stories that align with the interests of the Murdoch Family Trust, influencing the editorial position at Sky News or through the perception of their greater influence over the political process.

The transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, television, in print and online. **We consider that these concerns may justify a reference by the Secretary of State to the Competition and Markets Authority.**

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<sup>31</sup> For example, the Avaaz / Media Matters for America submission referenced public statements by Kelvin MacKenzie, Roy Greenslade, Sir Harold Evans and Andrew Neil, former editors of News Corporation titles.

## Our assessment has considered Fox’s and Sky’s commitment to broadcasting standards

### The number of breaches of the Broadcasting Code recorded by Sky and Fox is in line with those of comparable broadcasters

- 2.40 We have taken quantitative and qualitative approaches to assessing Fox’s and Sky’s compliance with the Broadcasting Code, considering not just the number of any breaches that have occurred, but also their nature and context.
- 2.41 Fox holds 14 broadcast licences in the UK, covering channels operated by Fox and its subsidiaries. In total, we have recorded Broadcasting Code breaches against these channels on 14 occasions in the last five years. Our view is that the number of breaches recorded against Fox services is not exceptional when compared to Sky, or to broadcasters that hold a similar number of licences.
- 2.42 A number of respondents to our invitation to comment<sup>32</sup> raised concerns about the nature of the content broadcast on Fox News and the extent to which its approach to impartiality and accuracy may call into question Fox’s commitment to broadcasting standards. We have, therefore, paid particular attention to Fox News’ record of compliance with the rules of the Broadcasting Code on due impartiality and due accuracy.
- 2.43 The Broadcasting Code explains that ‘due’ impartiality means that “*the approach to impartiality may vary according to the nature of the subject, the type of programme and channel [and]...the likely expectation of the audience as to content*”.<sup>33</sup>
- 2.44 Fox News is a US news channel, directed at US audiences, which is available in the UK. The average audience size for Fox News in the UK is 2,000 viewers.<sup>34</sup> The people who watch it in the UK are aware that it is a US channel and their expectations are different. It is not a main source of news in the UK.
- 2.45 Over the last five years, we have not recorded breaches of rules relating to due accuracy or due impartiality against news content broadcast on Fox News. However, we have found non-news content<sup>35</sup> broadcast on Fox News in breach of Broadcasting Code rules on materially misleading content on one occasion, and of the rules on due impartiality and elections on three occasions.
- 2.46 Sky holds 54 broadcast licences issued by Ofcom. In total, we have recorded breaches of the Broadcasting Code against Sky services on 26 occasions in the last five years. Ten of these investigations were considered resolved<sup>36</sup> because of remedial action taken by Sky. No breach related to due impartiality or due accuracy. None of Sky’s or Fox’s breaches of the Broadcasting Code were considered sufficiently serious to impose a penalty.

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<sup>32</sup> Campaign for Press and Broadcast Freedom; Avaaz; and [X].

<sup>33</sup> Ofcom. *The Broadcasting Code*. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>34</sup> BARB.

<sup>35</sup> Non-news refers to current affairs content including discussion items.

<sup>36</sup> ‘Resolved’ refers to a when a breach of the relevant rules occurred, but the broadcaster took appropriate steps to remedy the breach.

## **The compliance records of Fox and Sky overseas do not raise concerns**

- 2.47 Fox services have breached relevant broadcast regulation in several jurisdictions<sup>37</sup> over the last five years. The most relevant were those recorded within the EU, where a similar approach to broadcasting standards is applied.
- 2.48 Fox services have been found in breach of broadcasting standards rules in Italy four times within the last five years. Each breach related to rules limiting advertising and, on each occasion, a fine was levied. Fox services breached broadcasting standards in the Netherlands once in the last five years. No fine or other action was taken.
- 2.49 Sky services have been found in breach of broadcasting standards in Germany twice and in Italy eleven times in the last five years. These breaches related to the protection of minors (twice), commercial references<sup>38</sup> (once), limits on advertising (seven times), advertising of alcohol (twice) and impartiality during elections (once). In each case a fine was levied by the relevant regulator.
- 2.50 Fox's and Sky's compliance records overseas do not in our view raise concerns regarding the commitment of the parties to broadcasting standards. Neither party has a significant number of breaches in relevant jurisdictions over the past five years, and we do not consider therefore that their compliance record is indicative of concerns in relation to the broadcasting standards consideration.

## **We identified significant concerns about Fox's approach to ensuring Fox News content complies with the Broadcasting Code**

- 2.51 During our evidence gathering, we identified significant concerns about Fox's approach to ensuring Fox News content complies with the Broadcasting Code. In order to address these concerns, Fox committed to put in place a new compliance process for Fox News, which took effect on 15 May 2017.
- 2.52 We consider that the improvements made by Fox to its compliance arrangements and procedures are sufficient to meet the requirements of its licence. Fox has an ongoing obligation to comply with its licence conditions and with the Broadcasting Code. If any further compliance concerns were to arise following the proposed transaction, we would take enforcement action against Fox to secure compliance.

## **We have considered alleged failings in corporate governance at Fox News**

- 2.53 In her 'minded to' letter of 3 March 2017, the Secretary of State set out that "*In relation to broadcasting standards, one of the issues on which Ofcom would be expected to report is the extent to which past failings of corporate governance at News Corporation, now 21CF, have been satisfactorily remedied*".<sup>39</sup>

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<sup>37</sup> See Section 10.

<sup>38</sup> Section 9 of the Broadcasting Code covers references within programming to a product, service or trade mark, including rules for product placement, programme-related material and sponsorship.

<sup>39</sup> DCMS, (March 2017). 'Minded to issue a European intervention notice' letter.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610045/r\\_20130303\\_Sky\\_letter\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/610045/r_20130303_Sky_letter_FINAL.pdf)

- 2.54 Many submissions to us also raised concerns about corporate governance at Fox. We have considered alleged corporate governance failures in the context of our separate assessment of whether Sky would remain fit and proper to hold broadcast licences following the transaction. We have concluded that the behaviours alleged at Fox News amount to significant corporate failure, however, the overall evidence available to date does not provide a reasonable basis to conclude that if Sky were 100% owned and controlled by Fox, they would not be fit and proper to hold broadcast licences.

In light of Fox's and Sky's broadcast compliance records, and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. **Therefore, we consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority.**

### **Fox has proposed undertakings intended to address our concerns, in lieu of any reference by the Secretary of State to the Competition and Markets Authority**

- 2.55 The Secretary of State may accept undertakings in lieu of a reference to the Competition and Markets Authority if she considers them to be appropriate for the purpose of remedying, mitigating or preventing any adverse public interest effects which may be expected to result from the transaction.<sup>40</sup>
- 2.56 Fox has proposed a set of undertakings intended to ensure the continued editorial independence of Sky News. These undertakings propose that:
- 2.56.1 The Head of Sky News would retain full editorial control over the selection of news stories and any political comment and opinion broadcast on the Sky News channel.
  - 2.56.2 Fox would establish a Sky News Editorial Board, comprised of a majority of independent members, with no links to Fox or News Corp. The Editorial Board would have full control over the appointment and removal of the Head of Sky News.
  - 2.56.3 The Sky News Editorial Board would have a duty to report to Ofcom any attempts to influence the editorial decisions of Sky News of which it is made aware by the Head of Sky News. Fox would also ensure that a summary of any reports of this nature shall be included in its annual report.
  - 2.56.4 Fox would maintain the current compliance arrangements at Sky News, with any changes needing to be approved by Ofcom.
  - 2.56.5 Fox would maintain a Sky-branded news service, with net investment guaranteed for the next five years at a level not materially different (taking into account cost and revenue inflation) from Sky's current level of operational net investment in Sky News.

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<sup>40</sup> Paragraph 3(2) of Schedule 2 to the Order.

## **We consider that the proposed undertakings mitigate the public interest concerns**

- 2.57 The proposed undertakings are intended to insulate the Head of Sky News from external influence over editorial decisions. The editorial positions adopted by Sky News and News Corp outlets would be independent of each other and this could, in turn, restrict the ability of the merged entity to influence public opinion or the political process to a greater degree than otherwise.
- 2.58 We have received a number of submissions about the perceived ineffectiveness of past commitments made by the selling party in the context of acquisitions of The Times and Dow Jones. No evidence has been put to us that the commitments in either case were actually breached. We consider that the proposed undertakings in the current transaction are more robust than what was made binding in the case of The Times and Dow Jones. In particular, the proposed undertakings are enforceable by the Secretary of State (as opposed to enforcement by the selling party in the context of Dow Jones) and include an explicit reporting obligation in relation to attempts to influence the editorial stance of the Head of Sky News.

**We consider that the proposed undertakings offered by Fox to maintain the editorial independence of Sky News mitigate the public interest concerns.** The Secretary of State may accept the proposed undertakings if she considers that they are appropriate to prevent, remedy or mitigate the adverse effects arising from the plurality concerns. In this respect, we consider that there may be areas in which the proposed undertakings could be strengthened, for example, the ongoing arrangements for the appointment of the independent members of the Sky News Editorial Board and the period of Fox's commitment to maintaining its investment in Sky News.

## **Overall advice and recommendations to the Secretary of State**

In respect of the plurality consideration, the transaction raises public interest concerns as a result of the risk of increased influence by members of the Murdoch Family Trust over the UK news agenda and the political process, with its unique presence on radio, television, in print and online. **We consider that the plurality concerns may justify the Secretary of State making a reference to the Competition and Markets Authority.**

In light of Fox's and Sky's broadcast compliance records and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. **Therefore, we consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority.**

**We consider that the proposed undertakings offered by Fox to maintain the editorial independence of Sky News mitigate the media plurality concerns.** We recognise that behavioural undertakings can be difficult to monitor and enforce and that there are areas in which the proposed undertakings could be strengthened. The Secretary of State may accept the proposed undertakings if she considers that they are appropriate to prevent, remedy or mitigate the adverse effects arising from the plurality concerns.

## Section 3

# Our approach

## Summary

- 3.1 On 3 March 2017, Fox notified the European Commission of its intention to acquire the shares in Sky it does not already own. On 16 March 2017, the Secretary of State for Culture, Media and Sport asked Ofcom to report to her on the effect of the transaction in light of two public interest considerations: the plurality consideration and the broadcasting standards consideration.
- 3.2 Our role is to conduct a first stage investigation into the two public interest considerations and, on the basis of this investigation, to provide advice and recommendations that may be relevant to the Secretary of State's decision on whether to refer the transaction to the Competition and Markets Authority for further assessment. The threshold for a reference is low. The Secretary of State would need to hold a reasonable belief that it **may** be the case that the transaction **may** operate or **may** be expected to operate against the public interest.
- 3.3 In assessing the two public interest considerations, we have considered Fox, Sky and News Corp together for the purpose of our analysis owing to the material influence of the Murdoch Family Trust in each of Fox and News Corp.

## The Secretary of State asked Ofcom to report to her on the transaction in light of two public interest considerations

- 3.4 On 3 March 2017, Fox notified the European Commission of its intention to acquire the shares in Sky it does not already own. On 16 March 2017, the Secretary of State for Culture, Media and Sport issued a European intervention notice asking Ofcom to report to her on the transaction in light of the following public interest considerations<sup>41</sup>, as set out in section 58 of the Enterprise Act 2002<sup>42</sup>:
  - 3.4.1 *“the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience”* (‘the plurality consideration’); and
  - 3.4.2 *“the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003”* (‘the broadcasting standards consideration’).
- 3.5 On 21 April 2017, in light of the announcement of the General Election on 8 June 2017, the Secretary of State extended the deadline for our report to 20 June 2017.

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<sup>41</sup> Department for Culture, Media and Sport, (March 2017). *European intervention notice*.

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

<sup>42</sup> Section 58 of the Enterprise Act 2002.

## **Our role is to conduct a first stage assessment of whether the transaction may operate against the public interest**

- 3.6 Our role is to conduct a first stage investigation into the two public interest considerations, and on the basis of this to report to the Secretary of State with advice and recommendations which may be relevant to her decision on whether to refer the transaction to the Competition and Markets Authority for further assessment.
- 3.7 The threshold for a reference is low. The Secretary of State would need to hold a reasonable belief, on the basis of the evidence available, that **it may be the case** that the proposed acquisition **may operate** or **may be expected to operate** against the public interest.<sup>43, 44</sup> The Secretary of State may take our advice and recommendations into account when making her decision, but she is not bound by them.
- 3.8 Our role does not extend to considering potential competition issues. The European Commission is the relevant competition authority for the transaction. Following a first phase assessment, the Commission concluded that the proposed transaction does not raise competition concerns.<sup>45</sup>

## **We previously assessed the proposed acquisition of BSkyB by News Corporation in 2010**

- 3.9 In 2010, following an intervention notice by the Secretary of State, we conducted a public interest test into the proposed acquisition of Sky (formerly 'British Sky Broadcasting plc' or 'BSkyB') by News Corporation.<sup>46</sup> The Secretary of State's European intervention notice in that case referred only to the plurality consideration.<sup>47</sup>
- 3.10 At that time, we indicated that we reasonably believed the proposed transaction might be expected to operate against the public interest. Therefore, we considered that there was a need for a fuller second stage review of the plurality issues. The Secretary of State was not, however, called upon to reach a final decision as to whether or not to refer the proposed transaction to the Competition Commission (which was replaced by the Competition and Markets Authority in 2014) because the proposed transaction was withdrawn by the parties.<sup>48</sup>

## **This public interest test is separate from our ongoing duty to consider whether broadcast licence holders are fit and proper**

- 3.11 Under section 3 of each of the Broadcasting Act 1990 and the Broadcasting Act 1996, Ofcom has an ongoing duty to be satisfied that the holders of broadcast licences are fit and proper to be licensed. This duty means that we can at any time

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<sup>43</sup> Office of Fair Trading & Ors v IBA Health Ltd [2004] EWCA Civ 142, (19 February 2004).

<sup>44</sup> Article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.

<sup>45</sup> European Commission, (2017). *Case M.8354 FOX/SKY*.

[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8354](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8354).

<sup>46</sup> Ofcom, (2010). *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/81413/public-interest-test-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/81413/public-interest-test-report.pdf).

<sup>47</sup> Department for Business, Innovation and Skills, (November 2010). *European intervention notice*.

<http://old.culture.gov.uk/images/publications/bskyb-intervention-notice-nov-2010.pdf>

<sup>48</sup> The transaction was withdrawn in July 2011. <http://www.bbc.co.uk/news/business-14142307>

assess a licensee on our own initiative, and respond to concerns raised by third parties.

- 3.12 The public interest test and our ongoing duty to assess whether a licensee is fit and proper are separate processes with separate legal frameworks. As the issues we consider in this public interest test overlap with our own consideration of Sky's fitness to hold broadcast licences in the event of a change of control, we have examined any implications of the proposed transaction for Sky's fitness and propriety to hold its broadcast licences alongside our public interest test.

## **We have engaged with a range of interested parties**

- 3.13 We published a guidance note on 16 March 2017 setting out the process and timetable for preparing our report on the public interest considerations set out by the Secretary of State.<sup>49</sup> Alongside this, we published an invitation to comment and invited written submissions by 30 March 2017.<sup>50</sup>
- 3.14 We received 51,555 submissions in response to our invitation to comment from members of the public and a range of other interested parties. These have all been considered as part of our analysis. We have summarised the responses in Annex 2. We met with all of those who asked to meet us to explain their submissions.
- 3.15 We have also carefully considered all the information provided to us by the parties to the proposed transaction, including in response to requests for information from us, and have met with the parties to discuss that information. On 17 March 2017, Fox made an initial submission explaining why it believes that the transaction does not operate against the public interest.<sup>51</sup> We have considered Fox's arguments and supporting evidence as part of our analysis.
- 3.16 We sent out a number of information requests to inform our assessment. Requests were sent to Fox, Sky, News Corp, News Corp's subsidiary News Group Newspapers, and several of the commercial radio groups (to inform our understanding of Sky's role as a provider of commercial radio news<sup>52</sup>). We received responses to each of these requests, and to supplementary requests where we identified that we required further detail. The responses to these requests have all informed our analysis.

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<sup>49</sup> Ofcom, (2017). *Guidance note for public interest test on the proposed acquisition of Sky plc by Twenty-First Century Fox, Inc.*

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0039/98688/Guidance-note.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0039/98688/Guidance-note.pdf).

<sup>50</sup> Ofcom, (2017). *Invitation to comment for public interest test on the proposed acquisition of Sky plc by Twenty-First Century Fox, Inc.*

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/98708/Invitation-to-comment.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/98708/Invitation-to-comment.pdf).

<sup>51</sup> Fox, (March 2017). *Initial submission to Ofcom.*

<sup>52</sup> Sky, through its contract with IRN, a provider of news bulletins to commercial radio stations, provides news services to commercial radio stations.

## We have assessed Fox, Sky and News Corp together for the purpose of our analysis

- 3.17 In 2013, News Corporation was separated into two independent publicly traded companies: Fox and News Corp.<sup>53</sup>
- 3.18 Fox now holds the broadcast and media interests formerly held by News Corporation, including cable network programming, television, satellite broadcasting and filmed entertainment. In the UK, Fox is primarily a wholesale supplier of television channels, including Fox News, a 24-hour news channel covering US and international news, whose principal audience is the US. Fox is also currently the holder of 39.14% of Sky's issued share capital, carrying 37.19% of the voting rights in Sky.<sup>54</sup>
- 3.19 Sky provides retail pay-TV services directly to its customers and is also a supplier of television channels, including Sky News, which is available on all the major television platforms in the UK. Sky also provides news content in the form of bulletins and articles on its website, social media platforms and through mobile apps.
- 3.20 News Corp holds the publishing interests formerly held by News Corporation, including newspapers, information services and integrated marketing services, digital real estate services, book publishing, digital education and sports programming and pay-TV distribution in Australia. News Corp's operations in the UK are principally conducted through News UK (a national newspaper group responsible for The Sun, The Sun on Sunday, The Scottish Sun, The Times and The Sunday Times), Wireless Group (which operates a number of national and local radio stations), and HarperCollins (the publisher).
- 3.21 At the time News Corporation was separated, the company said this would allow each company to:
- 3.21.1 *“Focus on and pursue distinct strategic priorities and industry-specific opportunities that would maximize their long-term potential.*
  - 3.21.2 *Benefit from greater financial and operational flexibility and better position each company to compete.*
  - 3.21.3 *Respond and react more quickly to rapidly-evolving technology and global market opportunities.*
  - 3.21.4 *Tailor its capital structure, and allocate and deploy resources in a manner consistent with its strategic objectives that best enhances value for its respective shareholder group”.*<sup>55</sup>
- 3.22 Fox has argued that the separation of Fox and News Corp means that the transaction would not bring any news providers with a material audience in the UK

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<sup>53</sup> Registered as News Corporation but referred to in this document as News Corp, as distinct from the former News Corporation.

<sup>54</sup> Pursuant to a 2005 voting agreement between Fox, Sky and affiliated entities, the voting rights that Fox can exercise at general meetings of Sky are capped at 37.19%.

<sup>55</sup> News Corp, (June 2012). *News Corporation Announces Intent to Pursue Separation of Businesses to Enhance Strategic Alignment and Increase Operational Flexibility.*

<http://newscorp.com/2012/06/28/news-corporation-announces-intent-to-pursue-separation-of-businesses-to-enhance-strategic-alignment-and-increase-operational-flexibility/>

under single control or give rise to a significant change in news media ownership. In particular, Fox noted that Sky News would be brought under the control of Fox, a listed company governed by a Board with a majority of independent directors and no material UK news outlets. Fox's submission to us set out that: Fox "*has no involvement whatsoever in the running of News Corp (which is likewise governed by a Board with a majority of independent directors)*".<sup>56</sup>

- 3.23 At present, the Murdoch Family Trust (in conjunction with other small interests associated with Rupert Murdoch<sup>57</sup>) owns 38.9% of the voting shares in Fox and 39.4% of the voting shares in News Corp.
- 3.24 Members of the Murdoch Family Trust have prominent roles at Fox, Sky and News Corp. James Murdoch is Sky's Chairman, Chief Executive Officer of Fox and a Director at News Corp. Rupert Murdoch and Lachlan Murdoch are jointly Executive Chairmen of Fox. Rupert Murdoch is Executive Chairman and Lachlan Murdoch is Co-Chairman of News Corp. Rupert Murdoch is also Executive Chairman and Acting Chief Executive Officer of Fox News. The Murdoch Family Trust therefore holds material influence over the activities of Fox and News Corp because, at the very least, it is able to block special resolutions of each company which require a 75% majority at a shareholder meeting.
- 3.25 Given the material influence that members of the Murdoch Family Trust are able to exert over News Corp, any assessment of the public interest considerations should therefore take due account of News Corp's interests in media enterprises. This approach is consistent with section 26 of the Enterprise Act 2002, whereby enterprises are deemed to be under common control where a person or group of persons is able, directly or indirectly, materially to influence corporate policy.
- 3.26 Our assessment of the plurality consideration also takes into account the fact that Fox already owns 37.19% of the voting shares in Sky, which gives Fox material influence over Sky. Fox's proposed acquisition of the remaining shares in Sky would represent a move from partial to full control. Full control of Sky would allow Fox to do a number of things it cannot do at present, including taking decisions which are in the exclusive commercial interests of Fox.
- 3.27 Our starting point is therefore that the transaction would reduce the number of persons having control of media enterprises by bringing Sky under the full control of Fox.<sup>58</sup> The Court of Appeal has made it clear that in order to assess plurality and sufficiency of plurality, it is right to look not just at the *number* of persons having control, but also at the *range* of persons having control, before and after the transaction.<sup>59</sup> We have therefore made a qualitative assessment and taken into account "*the actual extent of the control exercised and exercisable over a relevant enterprise by another*".<sup>60</sup>
- 3.28 As a result, for the purpose of our analysis of the transaction, we have considered News Corp's newspaper titles alongside Fox and Sky services. We have also considered News Corp's record of compliance with relevant standards as part of our

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<sup>56</sup> Fox, (March 2017). *Initial submission to Ofcom*. p.18-19.

<sup>57</sup> For example, Rupert Murdoch owns a number of shares in Fox through the K. Rupert Murdoch 2004 Revocable Trust.

<sup>58</sup> Section 58A(4) of the Enterprise Act 2002. See also Court of Appeal in Sky/ITV at paragraph 121.

<sup>59</sup> The Court of Appeal decision in *British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2, paragraph 90.

<sup>60</sup> *ibid*, paragraph 121.

assessment of the broadcasting standards consideration, as well as that of Sky and Fox.

## The two public interest considerations require different types of assessment

- 3.29 As set out above, the Secretary of State has asked us to review the transaction in light of two public interest considerations: the plurality consideration and the broadcasting standards consideration. We have previously carried out public interest tests considering the potential impact of proposed transactions on plurality. This transaction is the first for which we have been required to undertake a public interest test considering commitment to broadcasting standards.
- 3.30 Plurality is by its nature complex to measure. It requires a qualitative assessment involving consideration of a wide range of sources. While the broadcasting standards consideration can also be complex and similarly requires a qualitative assessment, much of this is related to historical and ongoing compliance with our own Broadcasting Code and other regulatory requirements.

## We have wide discretion in assessing sufficient plurality

- 3.31 Parliament attaches particular significance to the importance of media plurality for the functioning of a healthy and informed democracy. In parliamentary debate around the Communications Act 2003, Lord McIntosh of Haringey stated that *“plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda”*.<sup>61</sup>
- 3.32 Plurality in the media contributes to a well-functioning democratic society through:
- 3.32.1 informed citizens who are able to access and consume a wide range of viewpoints across television, radio, online and print media from a variety of media organisations; and
  - 3.32.2 preventing too much influence over the political process being exercised by any one media owner.<sup>62</sup>
- 3.33 We define plurality as:
- 3.33.1 ensuring that the public have available to them, and consume a wide range of viewpoints, across a range of media enterprises. There should be a diversity of news media voices across television, radio, print newspapers and online.
  - 3.33.2 preventing any one media owner, or ‘voice’, having too much influence over public opinion and the political agenda. Preventing this can be achieved by ensuring that no one organisation or news source has a share of news

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<sup>61</sup> Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard.

<http://hansard.millbanksystems.com/lords/2003/jul/02/communications-bill>

<sup>62</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality: Ofcom’s advice to the Secretary of State for Culture, Media and Sport*.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

consumption that is so high that it risks exposing people to a narrow set of viewpoints.<sup>63</sup>

- 3.34 We have wide discretion in assessing sufficient plurality. The Court of Appeal requires “a *qualitative assessment of the position resulting, or likely to result*”, from the proposed transaction.<sup>64</sup>
- 3.35 When examining the plurality consideration, we adopt the approach taken by the Competition Commission when it assessed Sky’s proposed acquisition of 17.9% of shares in ITV in 2007 (‘the Sky/ITV case<sup>65</sup>’):
- 3.35.1 *“Whilst recognising that it would not be sufficient for plurality purposes to rely on a single provider (for example, the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a ‘sufficient’ level of plurality of persons. Rather, we have looked qualitatively at sufficiency. We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition.”*<sup>66</sup>
- 3.36 We have therefore considered whether the proposed transaction may result in a potential reduction in media plurality.
- 3.37 We also adopt the same approach as the Competition Commission did in the Sky/ITV case when considering different types of plurality. We *“distinguish between the range of information and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)”*.<sup>67</sup>
- 3.38 We have had regard to concerns raised in the Secretary of State’s ‘minded to’ letter of 3 March 2017<sup>68</sup>, in which she noted that *“...the merger could reduce the diversity of viewpoints across news providers and/or increase the [Murdoch Family Trust’s] ability to influence public opinion and the political agenda”* and that the Secretary of State *“considers that the extent to which the [Murdoch Family Trust] could or would be likely to influence Sky News is another issue that could usefully be investigated and reported on by Ofcom”*.

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<sup>63</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality: Ofcom’s advice to the Secretary of State for Culture, Media and Sport*.  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

<sup>64</sup> British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2, paragraph 87.

<sup>65</sup> Competition Commission’s Report on *Acquisition by B Sky B plc of 17.9% of the shares in ITV Plc* sent to Secretary of State (BERR). (14 December 2007).

<sup>66</sup> *ibid*.

<sup>67</sup> *ibid*, paragraph 30.

<sup>68</sup> DCMS, (March 2017). *‘Minded to issue a European intervention notice’ letter*.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610045/r\\_20130303\\_Sky\\_letter\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/610045/r_20130303_Sky_letter_FINAL.pdf)

3.39 In addition to the Sky/ITV case<sup>69</sup>, we have taken account of our approach in previous public interest tests, including the proposed acquisition in 2010 by News Corporation of the shares of BSkyB that it did not own.

### **We published a measurement framework for media plurality in 2015**

3.40 Our assessment of the plurality consideration has been informed by our measurement framework for media plurality.<sup>70</sup> The measurement framework consists of quantitative metrics, including industry data sources and our News Consumption Survey, as well as qualitative or more contextual factors. Quantitative metrics are organised into three areas:

- 3.40.1 **Availability:** The number of different news sources available on each media platform and across all media is a relevant aspect of media plurality. Understanding the number of providers or titles gives a sense of the amount of news sources that people can use. However, it does not measure how widely those sources are used. As such, availability metrics offer limited insight in isolation.
- 3.40.2 **Consumption:** We measure consumption on television, radio, printed newspapers and online using industry data for each platform.<sup>71</sup> We also measure cross-platform news consumption using our bespoke News Consumption Survey. In particular, we examine cross-platform reach (the number of people using different news sources), and cross-platform consumption (how much people use different news sources) using our 'share of reference' metric (see Figure 3.1).
- 3.40.3 **Impact:** Availability and consumption metrics indicate what news sources are available and how much they are being used, but not how much impact these sources are having on audiences. While measuring the impact and influence of news sources on people's attitudes is inherently complex, proxy measures for impact play an important part in any plurality assessment. The proxies we use are an individual's assessment of the importance of a particular item of news, its impartiality, reliability, trustworthiness, and the extent to which a news source helps them to make up their minds about issues in the news.

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<sup>69</sup> Including: a) the Competition Commission's Report on *Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc* sent to Secretary of State (BERR). (14 December 2007); b) the Competition Appeal Tribunal's judgment in 1095/4/8/08 *British Sky Broadcasting Group plc v (1) Competition Commission (2) The Secretary of State*; and c) the Court of Appeal's judgment in *British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2.

<sup>70</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport*.

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

<sup>71</sup> We have used the following industry standard measures: ABC (newspaper circulation); NRS / NRS PADD (newspaper readership); BARB (television viewing); RAJAR (radio listening); and comScore (online consumption).

**Figure 3.1 Share of reference**

**What is 'share of reference'?**

There is no standard industry metric to measure cross-platform share of news consumption. We have previously developed a 'share of reference' metric, which is based on responses to our News Consumption Survey. Share of reference is calculated by asking people which news sources they use and the frequency with which they use them. Each reference is then weighted according to frequency of its consumption, and summed to create a total number of news references. The share (%) of each news outlet can then be calculated based on the total share of references.

As with any consumer research, the approach has limitations. For example, the data relies on survey respondents being able accurately to recall their news consumption. These limitations were flagged by some of the respondents to our invitation to comment. These limitations are one reason why we do not rely on a single metric to understand consumption, but instead use a portfolio of measures. We consider share of reference in the round with platform specific industry metrics, as we set out in our platform-by-platform analysis.

- 3.41 Our analysis distinguishes between **retail** news, which is the individual title or brand of each news source that provides content direct to consumers (like ITV News), and **wholesale** news, which is the supply and production of the news for a retail news source (like ITN). Considering consumption at the wholesale level allows us to assess the consolidated reach and share of media owners, for example, where a single owner supplies a number of retail news outlets.
- 3.42 Quantitative metrics are important, but cannot alone provide a full assessment of plurality, given the complexity of news provision. We therefore consider relevant qualitative factors as an integral part of measuring plurality. These factors will vary depending on the transaction. Based on our measurement framework and responses to our invitation to comment, we judge that relevant factors in this transaction include: the ability news providers have to set the wider news agenda; the influence news providers have over the political process; and internal plurality within news organisations.

**The relevant audience is the UK audience for cross-media news and current affairs**

- 3.43 Our view is that the relevant audience for our assessment of the plurality consideration is the UK audience for cross-media news and current affairs across television, radio, printed newspapers and online.
  - 3.43.1 **News and current affairs:** We have previously advised the Government<sup>72</sup> that news and current affairs are the most relevant forms of content to help ensure citizens are informed. We have not had cause to change our view in this assessment.

<sup>72</sup> Ofcom, (June 2012). *Measuring media plurality: Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport*.  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/57694/measuring-media-plurality.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57694/measuring-media-plurality.pdf)

- 3.43.2 **Cross-platform:** We consider what the main effect of the transaction would be on cross-platform audiences. The activities of Fox and Sky are cross-platform: Fox's activities include television and online services and Sky's activities include television, radio and online services. As outlined above, any assessment of the public interest considerations should take due account of News Corp's interests in UK media enterprises, which include printed newspapers, online services and radio.
- 3.43.3 **Specific audience groups:** In the UK, Fox and Sky mainly provide news and current affairs to a UK-wide audience, with limited provision of news to specific regions or local areas. In Section 6, we note that there are some variations in news consumption among different demographic groups. Our view is that no particular subgroup would be significantly more affected as a result of the transaction to the extent that it would alter our overall recommendation or require specific remedial action to address that group.

## Our approach to the broadcasting standards consideration assesses compliance with the Broadcasting Code

- 3.44 In her 'minded to' letter, the Secretary of State identified particular factors which she considered to be relevant:
- 3.44.1 the extent to which Fox's compliance record in the UK demonstrates that it might be less effective than Sky at ensuring compliance with broadcasting standards, and there may therefore be a concern that Sky's compliance record may potentially deteriorate following the merger;
- 3.44.2 the extent to which Fox and the individuals who will have control of Sky and/or who will be responsible for carrying on the business of Sky following the merger have a good record of compliance more generally (i.e. with the rules and standards applicable in the other markets in which they have operated) may also be relevant; and
- 3.44.3 the implications of failures of corporate governance in other entities within the Fox and News Corporation groups of companies for the broadcasting standards public interest ground.
- 3.45 The Secretary of State indicated that in reaching her view that she was minded to issue a European intervention notice, she had taken account of the Department of Trade and Industry's guidance for the Secretary of State<sup>73</sup> ('the DTI Guidance'). That Guidance sets out that "*the intention behind [the broadcasting standards public interest consideration] is to assess whether persons controlling or carrying on media enterprises post-merger are likely to comply with the spirit as well as the letter of the broadcasting standards set down in the Communications Act 2003.*"
- 3.46 The DTI Guidance sets out a range of factors which the Secretary of State may wish to consider, including:
- 3.46.1 past compliance of any other broadcasting enterprises controlled by a media owner with broadcasting standards in the UK. In particular, it might

<sup>73</sup> Department for Trade and Industry, (May 2004). *Enterprise Act 2002: Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers*. Paragraphs 7.21 to 7.25.

<http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.bis.gov.uk/files/file14331.pdf>

- be appropriate to consider the due impartiality and accuracy of news offered by the media owner's other broadcasting enterprises;
- 3.46.2 the compliance of any other broadcasting enterprises it controls with broadcasting standards in other geographic regions or jurisdictions. This may add usefully to the overall assessment of the extent to which an enterprise is truly committed to broadcasting standards, wherever it operates;
  - 3.46.3 the record of any non-broadcasting media enterprises' compliance with standards applicable to those media enterprises might also be considered, as adding to the overall assessment of an enterprise's commitment to standards in markets where it operates. This would include standards imposed under self-regulatory regimes; and
  - 3.46.4 all other material factors. This might include comments, statements and any other plans made by the acquiring media owner which give an indication as to its commitment to UK broadcasting standards post-merger.
- 3.47 In line with the Secretary of State's 'minded to' letter, we have therefore considered:
- 3.47.1 whether the compliance record of Fox in the UK indicates that Fox would be less effective than Sky at ensuring compliance with broadcasting standards;
  - 3.47.2 whether the compliance record of Fox in markets other than the UK broadcasting markets raises concerns about compliance with broadcasting standards in the UK; and
  - 3.47.3 the implications of failures of corporate governance within Fox group companies and News Corporation group companies for the broadcasting standards public interest consideration.<sup>74</sup>

## The following sections set out our assessment of both public interest considerations

- 3.48 The following sections present our approach to the two public interest considerations, our analysis, and our advice and recommendations.
- 3.49 **Market context:** In this section, we describe the current market context for the provision of news and current affairs in the UK. We consider the audience and market trends affecting the way people access and consume news.
- 3.50 Sections 5-9 look specifically at the plurality consideration:
- 3.50.1 **Availability:** In this section, we assess how the transaction may affect the number and range of news providers available.
  - 3.50.2 **Consumption:** In this section, we assess how the transaction may affect the levels of consumption of different news sources.

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<sup>74</sup> We consider the implications of failures of corporate governance within Fox group companies and News Corporation group companies in detail in our fit and proper assessment.

- 3.50.3 **Impact:** In this section, we assess how the transaction may affect the impact of the Murdoch Family Trust on the relevant audience.
- 3.50.4 **Influence over the news agenda and political processes:** In this section, we consider how the transaction would affect the ability of the Murdoch Family Trust to set the wider news agenda and how the transaction would affect the influence the Murdoch Family Trust may have on the political process.
- 3.50.5 **Internal plurality:** In this section, we consider the extent to which internal plurality (the range of voices within an organisation or organisations under common control) can act as a counterweight to any concerns identified with external plurality.
- 3.51 **The broadcasting standards consideration:** In this section, we set out our analysis of the broadcasting standards consideration by looking at the compliance histories of Sky and Fox, their current compliance procedures and the potential effects of the proposed transaction on Sky's future broadcasting standards compliance.
- 3.52 **Advice and recommendations:** In this section, we summarise our advice and recommendations to the Secretary of State. We also consider whether undertakings proposed by Fox would prevent, remedy or mitigate the adverse effects arising from plurality concerns.

## Section 4

# Market context

## Summary

- 4.1 News and current affairs is provided in four main formats: television, radio, printed newspapers and online. A large number and range of media organisations provide news and current affairs on a free or paid for basis. The BBC is by far the most popular news provider, and half (49%) of news users responding to our News Consumption Survey name a service provided by the BBC as their single most important source of news. Sky News is the only wholly commercial television news provider of scale competing with the BBC's television news output.<sup>75</sup>
- 4.2 Television and radio news providers are required under our Broadcasting Code to present news with due accuracy and due impartiality, which limits the extent to which broadcasters can take partisan editorial positions. Other news providers are not bound by the same rules. Printed newspapers, their online services, and online only news organisations offer a range of opinions, representing views across the political spectrum. It is also possible for people to get a range of opinions online, including directly from politicians and commentators.
- 4.3 In recent years, consumption of online services has grown very quickly, driven by increased connectivity. For many, smartphones have become the main way to access the internet.<sup>76</sup> There has been a large increase in the amount of news available online, and news providers now compete for audiences in a converged media market. Despite greater competition, the online offers of traditional providers are still among the most popular online.<sup>77</sup>
- 4.4 While the market is still evolving, the growth in online news is creating new opportunities and challenges for how news is sourced, shared, attributed and monetised. The discoverability of news has been changed by social media such as Facebook and Twitter, search engines such as Google search and news aggregators such as Yahoo News. Such intermediaries are playing an increasingly important role in distributing news and current affairs content and driving web traffic.
- 4.5 Although print readership currently stands at 33% of all adults<sup>78</sup>, the growth of online provision and the increasing market share of online providers mean that the traditional operating models of newspaper providers are under pressure. While there has been some growth in the digital revenues of the newspaper brands, it has not – by some distance – compensated for declining print revenue.

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<sup>75</sup> The other competitors of scale are ITV, Channel 4 and Channel 5, which are all commercial public service broadcasters.

<sup>76</sup> 42% of internet users say the smartphone is their most important device to use to connect to the internet. Ofcom, (2017). *Technology Tracker: H1 2017*. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/101292/technology-tracker-data-tables-h1-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/101292/technology-tracker-data-tables-h1-2017.pdf).

<sup>77</sup> Ofcom News Consumption Survey 2016.

<sup>78</sup> National Readership Survey, any UK-wide newspaper, 7-day Average Issue Readership, 2016.

- 4.6 In comparison, while there has been a decline in television news consumption<sup>79</sup> – particularly among younger audiences – broadcasters are proving relatively resilient financially, with little significant change to their underlying revenue streams.

## Different regulatory requirements apply to each platform

### Broadcasters are subject to Ofcom’s Broadcasting Code

- 4.7 The Broadcasting Code applies to radio and television services licensed in the UK, as well as to the on-demand content of the BBC and S4C. Alongside other provisions to maintain editorial standards, it requires that news on these services, in whatever form, is reported with due accuracy and presented with due impartiality. These requirements limit the extent to which broadcasters can take particular editorial positions on matters of political or industrial controversy and matters relating to current public policy.
- 4.8 Much content on broadcasters’ websites will have been regulated under Ofcom’s Broadcasting Code where it has also been broadcast on television or radio. Additionally, broadcasters’ on-demand and catch-up content must comply with on-demand programming rules enforced by Ofcom. However, other content - such as articles, blogs and social media posts - is not subject to regulation.<sup>80</sup>

### The press is subject to self-regulatory regimes

- 4.9 A number of the major national titles, including The Times and The Sun, are regulated (for both print and online content) by the Independent Press Standards Organisation (‘IPSO’), which was established in 2014. IPSO’s stated aim is “*To support those who feel wronged by the press*”, “*To uphold the highest professional standards in the UK press*” and “*To determine whether standards have been breached and provide redress if so*”.<sup>81</sup> IPSO’s Editors’ Code sets out the rules that the newspapers and magazines it regulates have agreed to follow. Unlike Ofcom’s Broadcasting Code, it does not seek to limit publishers’ ability to take partisan positions on public policy and political issues.
- 4.10 Some local press titles have chosen to be regulated by IMPRESS, the only press regulatory body to be recognised by the Press Recognition Panel.<sup>82</sup> Like IPSO, IMPRESS has an Editors’ Code and regulates the print and online content of its members. Currently, no major national title is regulated by IMPRESS.
- 4.11 Some press organisations (including The Guardian, The Financial Times, Private Eye and The London Evening Standard) are regulated by neither IPSO nor IMPRESS, and have instead established their own editorial complaints frameworks.

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<sup>79</sup> Ofcom News Consumption Survey 2016.

<sup>80</sup> Under the BBC’s Charter and Agreement, the BBC is responsible for the editorial standards of its online content (with the exception of its on-demand content, such as the BBC iPlayer which must comply with the Ofcom Broadcasting Code). However, Ofcom has a new responsibility to consider, and give an opinion on, whether the BBC has observed relevant editorial guidelines in its online material. We have entered into an arrangement with the BBC to provide for this: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/101892/bbc-online-arrangement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf). Online content under this arrangement does not include social media.

<sup>81</sup> Ipsos. *Vision, mission and values*. <https://www.ipsos.co.uk/about-ipsos/vision-mission-and-values/>

<sup>82</sup> Established by Royal Charter in line with the recommendations of the Leveson Inquiry into the culture, ethics, and practices of the press 2012.

## Most online content is not regulated for standards

- 4.12 Online only news organisations like Huffington Post and BuzzFeed, and intermediaries like Facebook and Google, are not subject to such regulation.<sup>83</sup> However, they must comply with UK laws, including those relating to defamation and hate speech.
- 4.13 As noted above, the self-regulatory regimes for press organisations extend to their online content. News providers generally apply their own editorial guidelines and complaints procedures.

## News providers can play a variety of roles across the value chain

- 4.14 The news and current affairs value chain is complex, with a number of steps between initial news gathering and discovery of stories, and the final delivery of finished news content to consumers. We set out these steps in Figure 4.1.

**Figure 4.1 Illustrative news value chain**



- 4.15 While some news providers gather and produce content and distribute it themselves to consumers, others distribute news produced by a third-party wholesaler. For example, the national news broadcasts for ITV, Channel 4 and Channel 5<sup>84</sup> are all produced by ITN. Some news providers produce their own news as well as distributing news supplied from wholesalers. Most news producers use news wires, such as Reuters and the Press Association, or third parties such as freelance or 'citizen journalists', to aid their news gathering. However, editorial control remains with the news producer.

## Some aspects of news consumption have been broadly stable in recent years

### Television remains the most popular platform for news, but there are significant differences between age groups

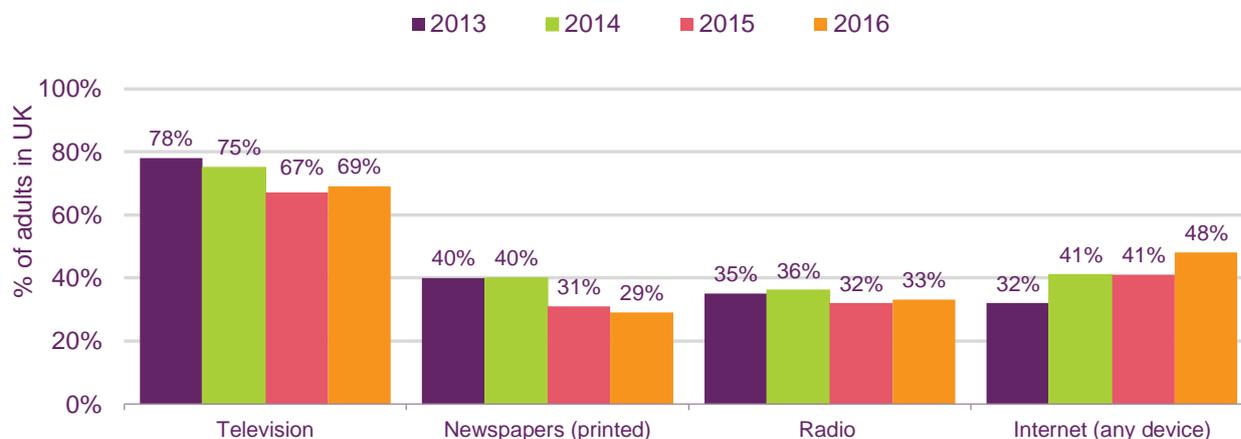
- 4.16 The proportion of people who use television for news has declined since 2013, from 78% to 69% in 2016. Despite this, television remains by far the most popular source of news, used by nearly seven in ten adults compared to 48% who use the internet for news, the next most popular platform (Figure 4.2). Use of the radio for news has

<sup>83</sup> In this document, we refer to online-only news organisations to mean providers which began online and publish all, or the vast majority, of their content online, for example BuzzFeed or the Huffington Post. For the purposes of our analysis, we have counted Vice News as an 'online-only' news organisation, although we note it began as a magazine and both publishes a print magazine and has a television channel, because the majority of its consumption is online.

<sup>84</sup> Until February 2012, Sky News was the wholesale provider to Channel 5.

been broadly stable since 2013, while printed newspapers and online news sources have seen bigger changes, which we discuss in detail later in this section.

**Figure 4.2 Use of four main platforms for news nowadays, 2013-2016**

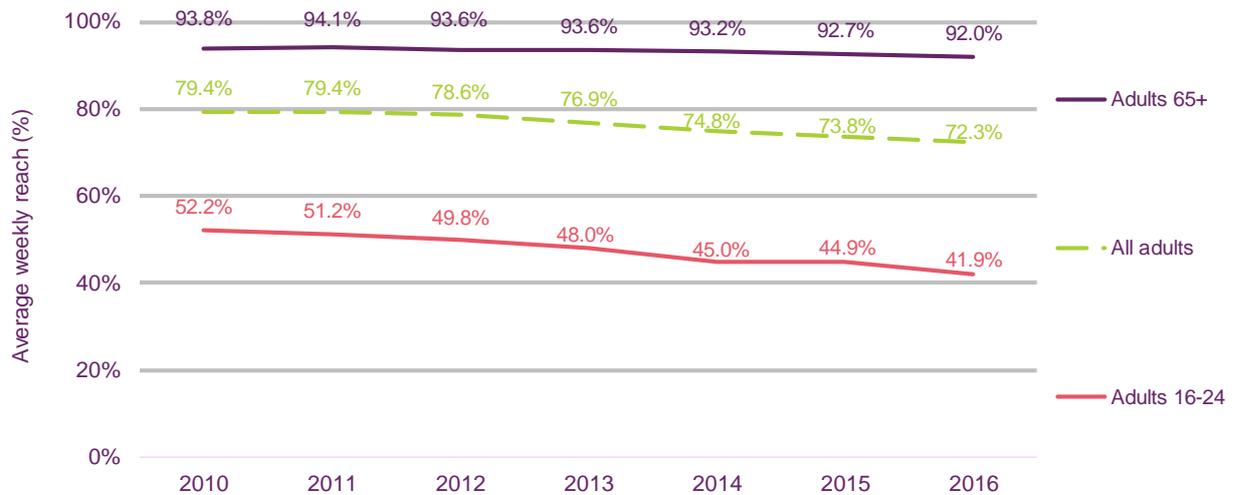


Source: Ofcom News Consumption Survey 2016.  
 Q3a/Q3aa Which of the following do you use for news nowadays?  
 Base: All adults 16+ (2016: 2894; 2015: 2921; 2014: 2731; 2013: 2862)

4.17 The continued resilience of television news and current affairs is driven primarily by its popularity among older audiences. As shown in Figure 4.3, average weekly reach for national/international television news among over 65 year olds was at 92% compared to 42% for 16-24 year olds in 2016. The weekly reach of current affairs<sup>85</sup> on television is also greater for older age groups: 59% for over 65 year olds compared to 14% for 16-24 year olds in 2016.

<sup>85</sup> BARB. Based on the 'current affairs: political/economical/social' genre.

**Figure 4.3 Average weekly reach of national/international television news by age group<sup>86</sup>**



Source: BARB

Note: Adults 16+, watching 3 or more consecutive minutes national or international news.

4.18 Overall, radio listening has also been resilient but consumption of radio news shows a similar demographic split. While 35% of over 65s say they listen to news on the radio, this drops to 20% for 16-24 year olds.<sup>87</sup>

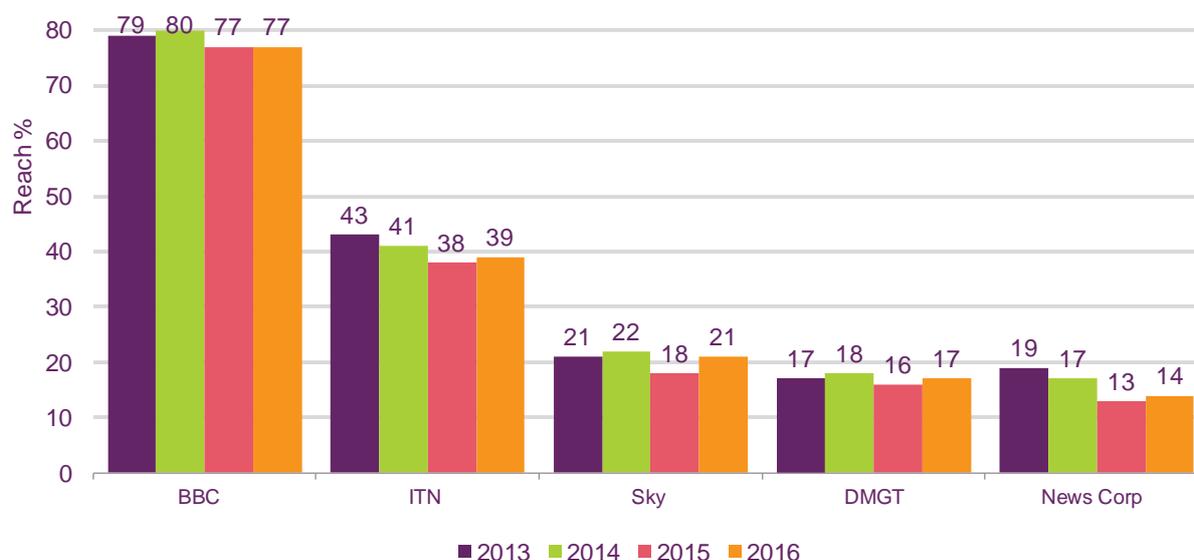
### The BBC is by far the most popular news provider

4.19 The BBC's position in the news market is strong and has been relatively stable over time. It is by far the most popular news provider on a cross-platform basis, used by significantly more people for news than any other provider, a position that has not changed in recent years. Across all platforms, the proportion of adults using any one of the BBC's services for news has been broadly stable since 2013 (79% in 2013 compared to 77% in 2016), and the BBC's news services reach nearly double the number of people as ITN, the next biggest provider (Figure 4.4).

<sup>86</sup> BARB. See Annex 3 for more detail.

<sup>87</sup> Ofcom News Consumption Survey 2016.

**Figure 4.4 Cross-platform audience reach of providers used ‘nowadays’ for news, 2013-2016**



Source: Ofcom News Consumption Survey 2016.

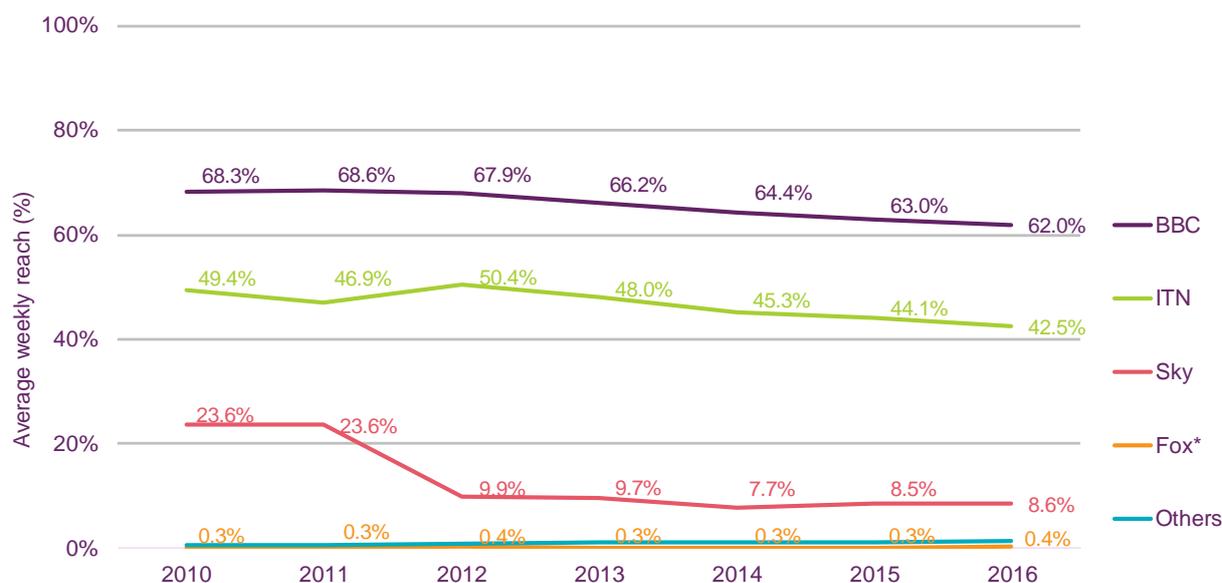
Base: All adults 16+ who use TV, Printed Newspapers, Radio, Internet, or Magazines for news nowadays 2016 (2659), 2015 (2626), 2014 (2580), 2013 (2628)

- 4.20 On television, the proportion of people who use the BBC for news weekly has declined since 2010 by 6 percentage points. But this is broadly in line with the average decline in the proportion of adults watching television for news, which is 7 percentage points. Since 2010, the proportion of people watching news on the BBC has been significantly higher than for any other television news provider. In 2016, the proportion of adults watching news on the BBC was around 20 percentage points higher than the proportion watching news provided by ITN (Figure 4.5). Similarly, the BBC is the most popular provider for current affairs, watched by 32% of adults on average every week compared to 11% who watch current affairs provided by ITN.<sup>88</sup>
- 4.21 The BBC is also the main source of radio news: among those that say they use the radio for news, 64% said they used a UK-wide BBC radio station.<sup>89</sup>

<sup>88</sup> BARB.

<sup>89</sup> Ofcom News Consumption Survey 2016.

**Figure 4.5 Average weekly reach of national/international news by wholesale television provider, 2010-2016**



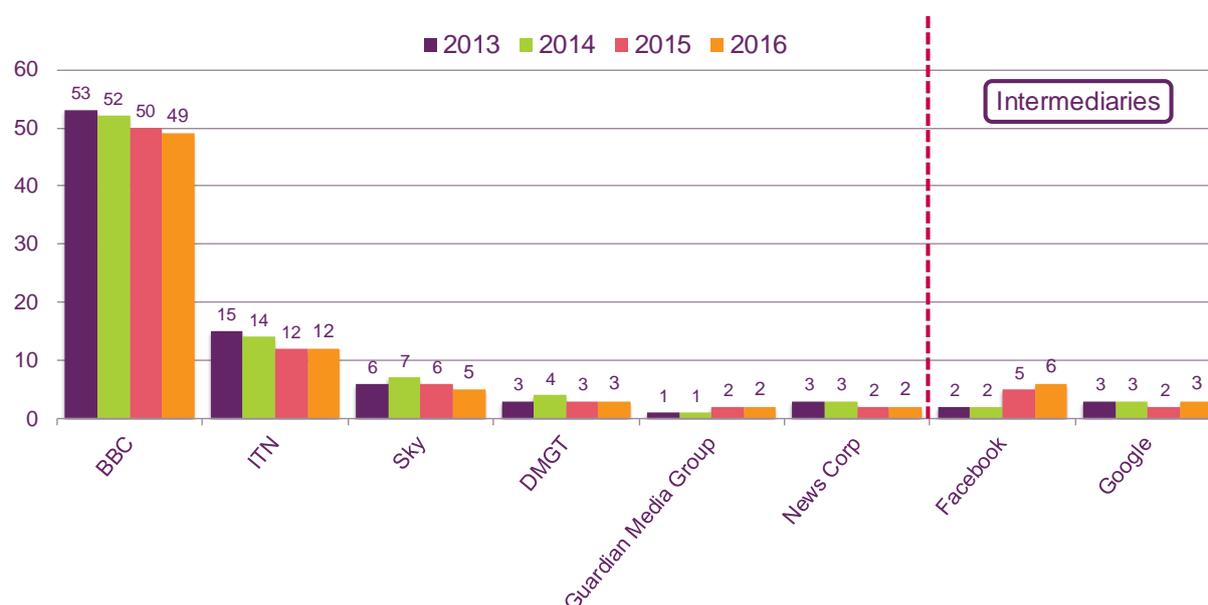
Source: BARB.

Note: Adults 16+.

\* Viewing to the BBC, ITN, Sky and 'Others' wholesale groups is based on viewing to the national/international news genre, while viewing to Fox News is based on viewing to the channel as a whole, including all types of programming because it does not report programme level data to BARB. In February 2012, Channel 5 moved from Sky as its wholesale supplier of news to ITN. This is reflected in the data periods above (2011= Jan 2011-Jan 2012 and 2012 = Feb 2012-Dec 2012 for Sky and ITN only).

4.22 According to our News Consumption Survey, when asked to name their single most important source of news, half (49%) of news users name the BBC. This proportion has declined from 53% in 2013, but is more than four times the proportion for ITN, the next highest rated provider (Figure 4.6).

**Figure 4.6 Single most personally important wholesale news provider, 2013 to 2016 (%)**



Source: Ofcom News Consumption Survey 2016. Q8a) Looking at all the sources of news you have said that you use, which one is most important to you personally

Base: All who use any news source nowadays 2016 (2618), 2015 (2588), 2014 (2553), 2013 (2628)

Note: only entities over 1% shown

4.23 The BBC’s strong position in news and current affairs provision is in part due to its strong presence across television, radio and online and in part due to the volume of news and current affairs output it produces.<sup>90</sup> In 2015, BBC One broadcast 3,650 hours of news and current affairs programming compared to 1,173 for ITV, 529 for Channel 4 and 869 for Channel 5 (BBC Two broadcast 1,112).<sup>91</sup> It is also due to the BBC’s public purposes, which are set out by the Royal Charter and Agreement, the constitutional basis for the BBC, and include the requirement for the BBC to “provide impartial news and information to help people understand and engage with the world around them”.<sup>92</sup>

4.24 Like the BBC, ITV, Channel 4 and Channel 5 are public service broadcasters. As such, they have a series of legal obligations to fulfil, including the provision of news. Sky News, which was established in 1989, is the only fully commercial competitor of any scale (with an audience of more than 1%) to the BBC’s news output.

<sup>90</sup> The BBC has a public purpose, set out in the Royal Charter and Agreement, to “provide impartial news and information to help people understand and engage with the world around them”.

<sup>91</sup> Ofcom, (2016). *PSB Annual Research Report 2016: PSB output and spend*.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/69743/annex-c.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/69743/annex-c.pdf)

<sup>92</sup> BBC. *Our public purposes*.

<http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/publicpurposes>

## The average number of sources people use for news has changed little since 2013

- 4.25 Across all platforms, on average, people use just under four different individual sources<sup>93</sup> for news. This number has changed little since 2013 (3.8 in 2016 compared to 3.7 in 2013).<sup>94</sup>
- 4.26 Users of different platforms use varying numbers of sources for news. Those who use the internet for news use the highest number of sources, and this number has slightly increased since 2013. Across all other platforms, the average number of sources people use has been broadly stable since 2013.

**Figure 4.7 Average number of news sources used by individuals, by platform, 2013-2016**

	2013	2014	2015	2016
<b>Across platforms</b>	3.7	3.8	3.5	3.8
TV	1.9	2.0	2.0	2.0
Printed newspapers	2.1	1.9	1.9	2.0
Radio	1.4	1.4	1.5	1.5
Internet	1.9	2.0	2.1	2.3

Source: Ofcom News Consumption Survey 2016. Q5a to Q5f) Which of the following do you use for news nowadays?

Base: All who use each platform for news nowadays

## The most significant changes to the news market have been driven by growth in the use of the internet for news

- 4.27 Despite the continued strength of television as a source of news and the continued strong position of the BBC, the news market has been characterised by a number of significant developments since 2010. Most significant is the growth in the use of the internet for news.
- 4.28 Since 2013, the proportion of adults who say they access news via the internet has increased significantly, and the proportions who say they use television and printed newspapers to access news have decreased (Figure 4.2). Online is now the second most popular platform for news, used by 48% of adults, after television (69%). In addition, the internet's share of reference<sup>95</sup> has significantly increased in recent years with the other platforms experiencing concomitant declines over the period.<sup>96</sup> Many

<sup>93</sup> We define 'sources' as individual services such as BBC One and individual titles such as The Times.

<sup>94</sup> Ofcom News Consumption Survey 2016.

<sup>95</sup> See Section 3.

<sup>96</sup> Ofcom News Consumption Survey 2016.

news providers now operate across multiple media platforms, and in particular online, in response to growing consumer use of the internet.

- 4.29 There are, however, notable differences in the way that different sections of society engage with online news, broadly reflecting their different use of the internet. Those aged 16-24 are significantly more likely to use the internet for news than those aged 65+ (63% compared to 18%). There is also a split across socioeconomic groups, with ABC1<sup>97</sup> adults more likely to use the internet for news than C2DE adults (61% compared to 36%).<sup>98</sup>
- 4.30 Growth in online news consumption is likely to have been driven by increased connectivity and the proliferation of connected mobile devices like smartphones and tablets.<sup>99</sup> While take-up is increasing among all ages, younger age groups are more likely to use a smartphone than older age groups (96% of 16-24 year olds compared to 47% of those aged over 55<sup>100</sup>). As smartphones have become the most popular device to access the internet<sup>101</sup>, people have more immediate 'on the go' access to news, for example through apps.
- 4.31 Despite the significant developments in the availability of news online, many people still rely on a limited number of news sources. For example, our News Consumption Survey found that in 2016, 38% of those who use the internet for news use only one source on that platform.<sup>102</sup>

## The growth of online is disrupting the traditional news market

### Traditional providers are popular online, but they compete with new online only news organisations

- 4.32 The production and distribution of online news has blurred the boundaries between platforms. According to our News Consumption Survey, many of the most popular websites or apps belong to the traditional news providers, who have an established presence either on broadcast or in print. Excluding intermediaries, the most popular online sources of news in the UK are the BBC, Sky News and the Daily Mail.<sup>103</sup> Many traditional news providers, including the BBC, Daily Mail, The Guardian and Sky News, also have a strong following through Facebook.<sup>104</sup>
- 4.33 Two of the most popular online only news organisations, Huffington Post and BuzzFeed, are growing relatively quickly, having launched in the UK in 2010 and

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<sup>97</sup> Social grade is a socioeconomic classification based on occupation, used by the research industry. See <http://www.nrs.co.uk/nrs-print/lifestyle-and-classification-data/social-grade/>

<sup>98</sup> Ofcom News Consumption Survey 2016.

<sup>99</sup> Ofcom, (2017). *Technology Tracker: H1 2017*.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/101292/technology-tracker-data-tables-h1-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/101292/technology-tracker-data-tables-h1-2017.pdf).

<sup>100</sup> *ibid*.

<sup>101</sup> 42% of internet users say the smartphone is their most important device to use to connect to the internet, Ofcom, *Ofcom Technology Tracker: H1 2017*.

<sup>102</sup> Ofcom News Consumption Survey 2016.

<sup>103</sup> Ofcom News Consumption Survey 2016.

<sup>104</sup> Socialbakers, (April 2017). *Facebook Pages Stats in the United Kingdom*.

<https://www.socialbakers.com/statistics/facebook/pages/total/united-kingdom/media/>

2013 respectively, though they have yet to achieve the scale of traditional outlets.<sup>105</sup> Fox has said that several of these providers have increasingly well-resourced journalistic functions<sup>106</sup>, although a submission from the Rt Hon Ed Miliband MP, the Rt Hon Ken Clarke MP, the Rt Hon Sir Vince Cable MP and the Rt Hon Lord Falconer of Thoroton ('Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer') commented that the number of full-time journalists employed by these providers is relatively small.

### **Intermediaries are changing the news market and helping the public to discover news content in new ways**

- 4.34 The growth in use of online news has created new ways in which content can be sourced, shared and monetised. Intermediaries distribute news content made by others rather than producing their own, typically giving consumers access to specific news content and individual stories. Intermediaries can be grouped into three broad categories:
- 4.34.1 news aggregators such as Yahoo News, Flipboard and Google News;
  - 4.34.2 search engines such as Google and Yahoo; and
  - 4.34.3 social media such as Facebook, Twitter and Snapchat.
- 4.35 Intermediaries are important to people, and are used by 47% of those who use the internet for news, more than newspapers' websites and apps or online only news sources.<sup>107</sup> Five of the top ten most widely used online news sources are intermediaries<sup>108</sup>, and Facebook is the second most widely used source.
- 4.36 Intermediaries are becoming increasingly important to news providers too. According to Enders Analysis, two thirds of national newspapers' online audience traffic was from Google and Facebook in 2016, compared with 41% in 2013.<sup>109</sup>
- 4.37 Social media is particularly popular for breaking news, with 60% of those who get news stories through social media saying they use it for this purpose.<sup>110</sup> Breaking news stories often develop rapidly with journalists, witnesses and participants reporting events in 'real time' on social media sites like Twitter. Some stories have been broken on social media and picked up by traditional news outlets, which reach larger and different audiences. Social media can also provide context, debate and discussion on issues covered originally by traditional providers. In comparison, social media is less commonly used for in-depth analysis, with 9% of those who get news stories through social media saying they use it to access this type of news.<sup>111</sup>
- 4.38 Intermediaries play a role in determining the content that people see. Facebook, Google and Twitter each use a form of algorithmic curation that affects the content shown to users. However, this role tends not to be direct editorial control because algorithms, rather than proprietors or editors, decide which stories are included and

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<sup>105</sup> BuzzFeed's UK audience grew by a factor of 8 in 4 years. Quoted in Politico, (2016). *BuzzFeed boss passes the BBC sneer test*. <http://www.politico.eu/blogs/on-media/2016/10/buzzfeed-boss-passes-the-bbc-sneer-test/>

<sup>106</sup> Annex 1 to Fox (March 2017). *Initial submission to Ofcom*.

<sup>107</sup> Ofcom News Consumption Survey 2016.

<sup>108</sup> Facebook, Google, YouTube, Twitter, Google News.

<sup>109</sup> Enders Analysis, (February 2017). *News brands: Rise of membership as advertising stalls*.

<sup>110</sup> Ofcom News Consumption Survey 2016.

<sup>111</sup> Ofcom News Consumption Survey 2016.

given prominence. The curation is based on popular content on the intermediaries, as well as inferred preferences from the user's previous interactions on the platform, including who they have chosen to follow and which stories they have previously read or interacted with.

- 4.39 Content consumed through intermediaries comes from a range of traditional and newer sources of various sizes. These sources have various levels of quality assurance and fact checking and consumers will have different expectations of different providers based on their familiarity and previous experiences. In some cases, consumers may be less likely to trust content from newer or smaller sources.<sup>112</sup> As a result, people may look to traditional providers to help them navigate the range of news content available, as well as to contextualise and validate stories provided by social media users.<sup>113</sup> Social media offers users the ability to comment and share news, and to understand what their friends and public figures care about. This interactivity is cited by users as a reason for using social media for news.<sup>114</sup>
- 4.40 Intermediaries pose an issue for producers of original news content because people may be less aware of the source of their news when using an intermediary. Research in the US suggested that people only recalled the source of a news story accessed through social media 52% of the time.<sup>115</sup> Industry analysts note that successful online news providers are focusing on editorial branding so that consumers can recognise a provider's article or video on any platform.<sup>116</sup>
- 4.41 A response to our invitation to comment from Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer suggested that the use of intermediaries may affect the type of news consumed and produced, arguing news providers are increasingly focusing on types of content that are better suited to sharing through intermediaries, such as opinion pieces, commentary and entertainment content, instead of news reporting.

## **While newspapers have established their presence online, print readership continues to decline**

- 4.42 The operating model of newspapers has been affected the most by growth in use of online news. Over the past two decades, circulation has fallen for both daily and Sunday newspapers and this trend has become more pronounced in recent years.<sup>117</sup> Average UK net circulation for national daily titles declined 35% between 2010 and 2016, and national Sunday titles have experienced a 41% decline.<sup>118</sup> In recent years, this decline has been driven by falls in circulation of the tabloid press. In contrast, some news and current affairs magazines are showing greater resilience, with titles

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<sup>112</sup> We look at evidence relating to this in Section 7.

<sup>113</sup> Robin Foster, (July 2012). 'News Plurality in a Digital World' in Reuters Institute in *Digital News Report 2016*.

<sup>114</sup> Reuters Institute. *Digital News Report 2016*.

<sup>115</sup> Pew Research Center, (9 February 2017). *How Americans Encounter, Recall and Act Upon Digital News*. <http://www.journalism.org/2017/02/09/part-ii-characteristics-of-news-instances/#how-people-get-to-news-impacts-the-full-online-news-experience>

<sup>116</sup> Enders Analysis, (22 March 2016). *The Rise of Platforms and News Distribution*.

<sup>117</sup> Trends for 1950-2010 in Communic@tions Management Inc., *Sixty Years of Daily Newspaper Circulation Trends*, p. 17, available at [http://media-cmi.com/downloads/Sixty\\_Years\\_Daily\\_Newspaper\\_Circulation\\_Trends\\_050611.pdf](http://media-cmi.com/downloads/Sixty_Years_Daily_Newspaper_Circulation_Trends_050611.pdf). Trends for 2010-2016 can be found in Section 6 of this report.

<sup>118</sup> ABC/ Mediatel / Ofcom analysis. Includes Daily Record in Scotland. NB: Circulation figures exclude free titles London Evening Standard (Lebedev) and Metro (DMGT).

such as *Private Eye*, *The Week* and *The Spectator* experiencing some growth in circulation over the past two years.<sup>119</sup>

- 4.43 In line with *circulation* falls, printed newspaper *readership* is also in decline. Average issue readership of UK-wide titles has declined from 54% in 2010 to 33% in 2016.<sup>120</sup> The largest decline has been in tabloid readership: *The Daily Star*, *The Sun* and *Daily Mirror/Daily Record* all roughly halved over this period. Readership of UK-wide titles among 15-34 year olds has seen an even greater rate of decline over the same period, from 45% to 19%. *The Sun* attracts the highest reach for UK-wide titles among 15-34 year olds (6%), although the *Metro*, which is only distributed in cities and towns, is read by 8% of people in this age group.<sup>121</sup> According to our News Consumption Survey, printed newspapers are now the fourth most used platform for news, behind television, online and radio.

### **In response to falling print readership, many newspapers have developed their online news offers**

- 4.44 National newspapers have sought to attract and retain readers by developing their online news (websites as well as smartphone and tablet apps). Newspaper providers have established audiences online. According to our News Consumption Survey, 31% of all those respondents who use the internet for news use newspapers' websites or apps. Newspaper providers also distribute their content via intermediaries including social media, which are used by 47% of those who use the internet for news.
- 4.45 The decline in print readership alongside the growth in online competition has had a significant impact on print revenue, as highlighted by responses to our invitation to comment.<sup>122</sup> We discuss funding challenges driven by increased use of the internet for news in more detail below.

### **Convergence has led to increased competition for revenues, which has particularly affected newspapers**

- 4.46 News providers on each platform are financed in a range of ways. These include advertising, subscription, donations, and, in the case of the BBC, the licence fee. The internet offers news providers the ability to reach a global audience at a lower cost of distribution. *The Daily Mail* and *The Guardian* both have a significant international presence online.<sup>123</sup>

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<sup>119</sup> ABC: Jan-June 2014, July-Dec 2016. Over this period, *Private Eye* circulation increased from 218k to 250k and the *Spectator* from 54k to 61k.

<sup>120</sup> NRS, any UK-wide newspaper, 7-day Average Issue Readership, 2016.

<sup>121</sup> The reach of the UK-wide titles is calculated on the average issue readership (AIR) over 6 days whereas the reach of the *Metro* is calculated on the AIR over five days (as the *Metro* doesn't go to print on Saturdays).

<sup>122</sup> Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; [☒]; and Barnett, S., Moore, M., & Tambini, D. (2017). *Media plurality, the Fox-Sky bid, and the case for referral to Ofcom*. Media Policy Brief 18. London: Media Policy Project, London School of Economics and Political Science ('LSE Media Policy Project'). <http://blogs.lse.ac.uk/mediapolicyproject/files/2013/09/LSE-MPP-Policy-Brief-18-Media-Plurality.pdf>

<sup>123</sup> Both *The Daily Mail* and *The Guardian* have online offers for the US and Australia (*Guardian US* has offices in New York, San Francisco and Washington DC and launched *Guardian Australia* in 2013, while the *Mail Online* developed its American brand, with a *DailyMail.com* masthead for American users, alongside *Daily Mail Australia*).

- 4.47 Broadcasters have adopted a 'free at the point of use' model for their online news provision. In most cases, online only news organisations also offer freely accessible content. Many rely heavily on advertising revenue. Some, like BuzzFeed and Vice Media, have also secured investment from other media companies and venture capitalists. Online only news organisations often focus on 'native advertising', or sponsored content in the form of bespoke articles or videos created for brands.<sup>124</sup> Advertising is also the main source of revenue for newspapers online.
- 4.48 However, increased competition for revenues and the role of intermediaries have made it challenging for news providers to make money. Facebook and Google, for example, are estimated to take a large proportion of display advertising revenue<sup>125</sup>, although in some cases they also enter revenue sharing arrangements with news providers and sell advertising on their behalf. For example, Facebook monetises unsold Instant Articles inventory for publishers through Facebook Audience Network<sup>126</sup> and has previously paid publishers directly to produce Instant Videos.<sup>127</sup>
- 4.49 Submissions to our invitation to comment<sup>128</sup> asserted that online news provision is creating challenges for newsgathering. [§] cited Enders Analysis' prediction that the UK will see a reduction in advertising spend over the next two years across all sectors apart from online, concluding that "[t]his rapid change in the commercial environment in which news organisations operate is placing new pressures on news organisations to find alternate revenue streams."

### **The business models of newspapers have been particularly affected by the growth in use of online news**

- 4.50 The impact of the growth in the use of online news has been particularly disruptive for the business models of newspapers. Printed newspapers have become less attractive to advertisers given the drop in readership, particularly among younger people.
- 4.51 As Figure 4.8 shows, while the total digital advertising revenue of national newspapers has risen by £79m in real terms since 2011, the decline in their print advertising revenue significantly outstrips this growth. At this time, digital revenues alone may struggle to sustain the newsrooms of scale currently run by most newspapers.

<sup>124</sup> Lucy Küng, (July 2015). *Innovators in Digital News*. <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Innovators%20in%20Digital%20News%20Extract.pdf>. As cited in The Media Briefing, (31 July 2015). 'Why are leading digital news providers embracing native advertising?'. <https://www.themediabriefing.com/article/why-are-leading-digital-news-providers-embracing-native-advertising>

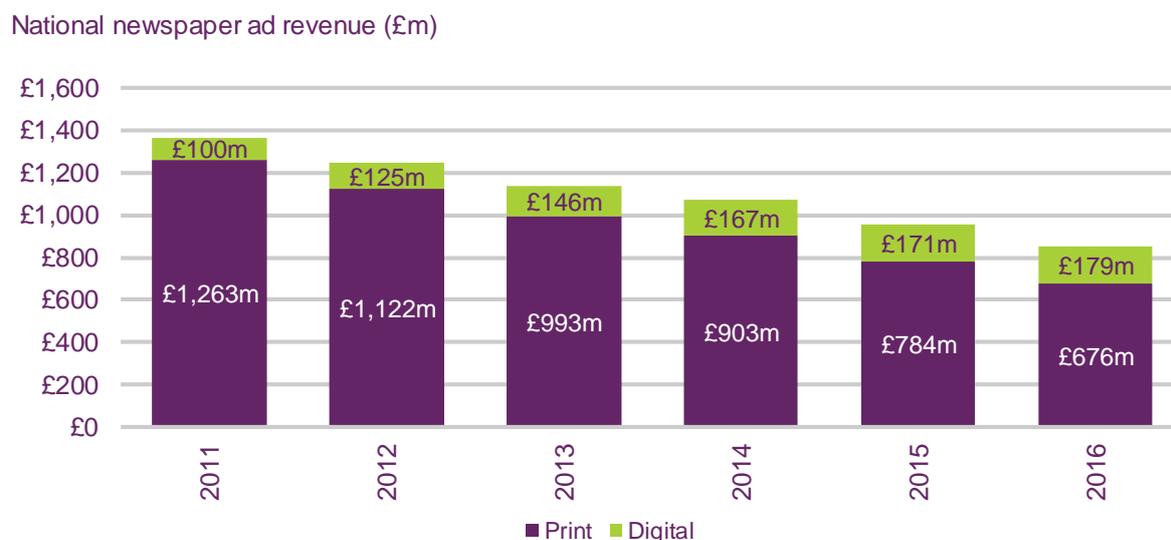
<sup>125</sup> A report by OC&C consultants, reported in The Guardian (<https://www.theguardian.com/media/2016/dec/15/google-facebook-uk-online-ad-revenue>) estimated that in December 2016 Google and Facebook accounted for 53% of the UK online display ad market.

<sup>126</sup> [https://developers.facebook.com/docs/instant-articles/faq#faq\\_1575778969390065](https://developers.facebook.com/docs/instant-articles/faq#faq_1575778969390065)

<sup>127</sup> The Wall Street Journal, (22 June 2016). *Facebook Signs Deals With Media Companies, Celebrities for Facebook Live*. <https://www.wsj.com/articles/facebook-signs-deals-with-media-companies-celebrities-for-facebook-live-1466533472>

<sup>128</sup> Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; and [§].

**Figure 4.8 National newspaper print revenue and digital advertising revenue (constant prices)<sup>129</sup>**



Source: AA/WARC Expenditure report

- 4.52 In addition to trying to optimise their digital advertising revenue, newspaper providers are pursuing a range of other funding models to underpin their online news provision. These range from membership relying on voluntary donations through to subscriptions through full or partial paywalls.
- 4.53 The effectiveness of the various approaches is not yet clear. It may be that these models are more successful for providers of specialist news, like in-depth finance or business news. For example, more than three quarters of the total paying readership of *The Financial Times* are now online subscribers.<sup>130</sup> In comparison, *The Sun* dropped the paywall on its website in November 2015 after two years.<sup>131</sup>
- 4.54 Facebook and Google, with billions of registered users between them<sup>132</sup>, take a large share of the online advertising market. For example, industry analysts estimate that in 2016 Facebook and Google between them accounted for 90% of digital advertising display growth in the UK.<sup>133</sup> Facebook and Google are attractive to advertisers because their data and algorithmic tools allow them to target advertising in a more precise way compared to print.

<sup>129</sup> AA / WARC Expenditure Report, National Newsbrands print total and digital total, constant (2005) prices.

<sup>130</sup> Digital subscriptions grew 14% to 650,000, more than three-quarters of the total paying audience (assured by Deloitte, Q4 2016). <http://aboutus.ft.com/2017/04/03/financial-times-2016-annual-results/#axzz4fYhCyEGU>

<sup>131</sup> Press Gazette, (October 2015). *The Sun scraps online paywall two years on in favour of 'blended revenue model*. <http://www.pressgazette.co.uk/sun-scrap-online-paywall-end-next-month/>

<sup>132</sup> US SEC, Form 10-Q Facebook, Inc. (for the quarterly period ended 31 March 2017), available at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001326801/2309fab3-1f67-46bc-8d66-7039bc4a0e68.pdf>; US SEC, Form 10-K Alphabet Inc. and Google Inc. (for fiscal year ending 31 December 2015), available at <https://www.sec.gov/Archives/edgar/data/1288776/000165204416000012/goog10-k2015.htm>.

<sup>133</sup> Enders Analysis, (January 2017). *News brands: Rise of membership as advertising stalls*.

- 4.55 To mitigate declines in their core revenues, newspaper groups have sought to reduce costs through reductions in format sizes and page count, as well as closures of titles, consolidation of print operations and staff reductions including of frontline journalists. For example, in October 2015, Trinity Mirror acquired full ownership of regional newspaper group Local World with the aim of creating a multi-media business of scale and to help manage costs.<sup>134</sup> More recently, in June 2017, the Guardian Media Group announced that the Guardian newspaper and its sister Sunday newspaper, the Observer, will change to tabloid format in early 2018. The Guardian Media Group also announced that its printing operations will be closed over the same period, with printing outsourced to presses run by Trinity Mirror. These changes are intended to help the loss-making titles break even at operating level by 2019.<sup>135</sup>
- 4.56 Some respondents to our invitation to comment cited evidence showing that national, regional and local newspaper groups have significantly reduced their news production in recent years, and said that this has a negative effect on the nature and range of news reporting and plurality.<sup>136</sup> In March 2016, the print editions of The Independent and Independent on Sunday closed because these were deemed no longer economically viable.<sup>137</sup> The Independent became an online only offer, with fewer journalists.<sup>138</sup> The LSE Media Policy Project has said that, as a result of a reduction in news production capacity: *“the public, politicians, parties and public bodies will rely more heavily on fewer, sparser news organisations. Those news organisations remaining will consequently have more political influence.”*

### Resources invested in broadcast platforms remain more resilient

- 4.57 Television broadcasters collectively spent £400m in 2015 on news and current affairs programming, down from £434m (in real terms) in 2010.<sup>139</sup> In contrast with the challenges faced by newspapers, commercial broadcasters’ total advertising revenue as a proportion of all advertising has proved resilient, remaining at approximately 25% since 2010.<sup>140</sup> However, this revenue source may come under pressure in the future, given eroding television viewing among younger people.

<sup>134</sup> Trinity Mirror plc, (28 October 2015). *Trinity Mirror to take full ownership of Local World in transformative deal*. <http://www.trinitymirror.com/pressrelease/acquisition-of-local-world/2230>.

<sup>135</sup> The Guardian press release, (13 June 2017). *Guardian Media Group moves print titles to tabloid format as part of three-year transformation programme*. <https://www.theguardian.com/gnm-press-office/2017/jun/13/guardian-media-group-moves-print-titles-to-tabloid-format-as-part-of-three-year-transformation-programme>

<sup>136</sup> Professor Steven Barnett; [X]; Media Reform Coalition; and LSE Media Policy Project.

<sup>137</sup> As cited in The Guardian, (12 February 2016), ‘Independent and Independent on Sunday print closures confirmed’. <https://www.theguardian.com/media/2016/feb/12/independent-and-independent-on-sunday-closures-confirmed>.

<sup>138</sup> Independent Print Limited, Strategic Report in Report and financial statements 2015.

<sup>139</sup> We are unable to make direct comparisons across this time series as the mix of news channels included in the total differ in the 2010 and 2015 totals – due to launches and closures of some channels, for example. Moreover, spend figures for the non-PSB news channels will include current affairs programmes broadcast on specialised news channels; this will however not capture some current affairs programmes that are broadcast on other channels.

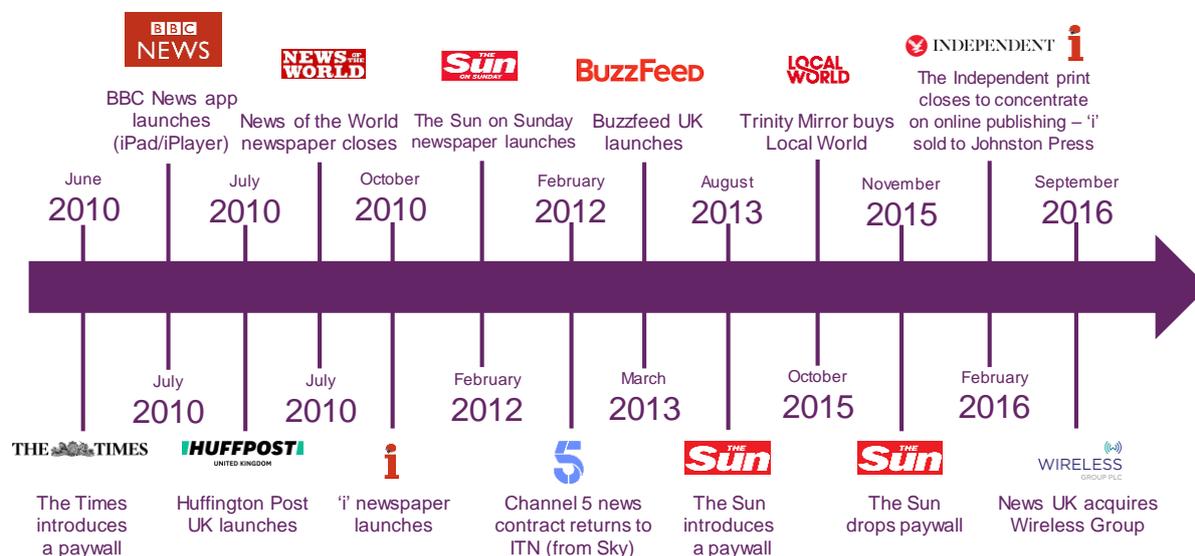
<sup>140</sup> AA/WARC Expenditure Report. Includes all television ad spend, including broadcaster VOD. Percentages are of total UK advertising spend in that year.

- 4.58 The BBC's overall spending on its radio services has been relatively stable. In 2015/16 it spent £277m on its network radio services content, compared with £289m the previous year.<sup>141</sup>
- 4.59 Commercial radio revenues are in relatively good health. Overall, commercial stations have had relatively flat revenues in real terms since 2010 with 2015 revenues of £519m.<sup>142</sup> Since 2010, there has been some consolidation in the industry. Global acquired GMG Radio in 2012, Bauer Media acquired Absolute Radio in 2013, and News Corp acquired Wireless Group in 2016.

## These trends have led to significant developments in the news market since 2010, and we expect the market to continue to change

- 4.60 The trends since 2010 outlined above have seen significant increases in online news provision and changes in discoverability and consumption across different platforms. Traditional providers have responded to these changes and to the increased competition from online providers by developing new business models and often increasing their multi-platform offerings. We expect the news market to continue to develop in future, particularly as use of the internet for news continues to increase.
- 4.61 Figure 4.9 sets out a timeline of some significant developments in the UK news and current affairs market since 2010, including the launch and closure of different news providers. The timeline illustrates that the news market is continually evolving, with news providers on each platform trying new things and looking to expand their presence across one or more platforms.

**Figure 4.9** Timeline of significant developments in the UK news market since 2010



Source: Ofcom research.

<sup>141</sup> BBC, *Annual Report and Accounts 2015/16*, <http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/ara>.

<sup>142</sup> Ofcom, (August 2016). *The Communications Market Report 2016*. <https://www.ofcom.org.uk/research-and-data/cm/cmr16>.

## Section 5

# Availability

## Summary

- 5.1 A range of news providers is available across television, radio, printed newspapers and online. This range includes impartial and opinionated news providers at different points across the political spectrum. News sources have proliferated online, increasing the range of available news content. In this section, we assess how the transaction may affect the number and range of news providers available.
- 5.2 Together with the BBC, Sky is one of two major wholesale providers of UK focused 24-hour television news, and also provides news and current affairs online. Sky News also provides wholesale news content to the majority of UK commercial radio stations through IRN. Fox News is available on television and online, and News Corp currently provides news and current affairs via newspapers (print and online) and radio (through the Wireless Group).
- 5.3 The transaction would not result in a significant change in the number of providers across the different platforms.

## Availability is one aspect of the plurality measurement framework

- 5.4 Understanding the number and range of providers available on each platform is relevant to our assessment, but we recognise that availability metrics alone provide limited insight to media plurality. It is important to consider availability alongside other factors, including how often a news source is used and the impact it has.

## A wide range of news providers is available across multiple platforms

- 5.5 A range of different commercial operators is available on television, radio, printed newspapers and online. Clearly, editorial style and tone varies across providers and platforms, and news providers cover the same story with different editorial voices. On television, purely commercial broadcasters like Sky operate alongside a range of broadcasters with non-commercial remits, including publicly owned, publicly funded broadcasters (e.g. the BBC and S4C), publicly owned but commercially funded broadcasters (e.g. Channel 4), and commercial institutions with statutory remits, (e.g. ITV and Channel 5). As shown in Figure 5.1, many news providers operate across more than one platform.
- 5.6 These news sources are not equally accessible to all individuals. Most obviously, online news sources are only available to people with access to the internet.<sup>143</sup> Younger people are more likely to have internet access, as are ABC1 adults. Thirty-three per cent of UK adults aged 65+ and 25% of adults in DE households do not have access to the internet at home.<sup>144</sup> As newspapers increasingly experiment with

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<sup>143</sup> In H1 2017, the proportion of adults with broadband (fixed and mobile) was at 83% (Ofcom Technology Tracker, H1 2017).

<sup>144</sup> Ofcom Technology Tracker, H1 2017.

their business models, different forms of subscription and paywalls have emerged, which also affect the accessibility of news sources for some consumers.

**Figure 5.1 Multiplatform scope of the news offer provided by different news operators (at retail level - UK)**

News outlet	Television (broadcast/online)	Radio (broadcast/online)	Newspapers / print	Online news*
BBC	✓	✓		✓
Sky	✓			✓
Channel 4	✓			✓
Channel 5	✓			✓
ITV	✓			✓
Daily Mail and General Trust			✓	✓
News UK		✓	✓	✓
Guardian Media Group			✓	✓
Trinity Mirror Group			✓	✓
Lebedev Foundation			✓	✓
Telegraph Media Group			✓	✓
Northern & Shell			✓	✓
Johnston Press			✓	✓
Nikkei			✓	✓
Global		✓		✓
Bauer		✓		✓
Buzzfeed.com				✓
Huffington Post				✓
Vice	✓		✓	✓
Fox/Sky/News Corp	✓	✓	✓	✓

\*dedicated news channel online, including digital extension of traditional news providers: website, social media, app

## The proposed transaction involves significant players on all four platforms

### Sky and Fox broadcast dedicated news channels in the UK

5.7 At a retail level, television news and current affairs is delivered by: the BBC through its UK-wide and regional services and its 24-hour news channel; Sky News; and the commercial public service broadcasters, ITV, Channel 4 and Channel 5, which are all free to air. Some mixed genre channels also broadcast some news and current affairs, as do other, largely international, dedicated news channels, of which we identified 28 channels.<sup>145</sup> Some examples of these channels are CNN, RT and Bloomberg. At a wholesale level, ITN supplies news to ITV, Channel 4 and Channel 5. In contrast, the BBC and Sky produce their own news and current affairs.

5.8 Sky and Fox provide television news and current affairs through dedicated commercial news channels, Sky News and Fox News (Fox News is available only on the Sky platform). Sky News is one of three UK focused rolling news channels, along with the BBC News and BBC Parliament channels. Sky broadcasts a small amount of news and current affairs content on its non-news television channels (Sky One, Sky Atlantic and Pick).<sup>146</sup>

<sup>145</sup> Ofcom research. Note that not all of these channels are BARB reported, and some are foreign language news channels.

<sup>146</sup> BARB. See Annex 3 for more detail.

## Sky News Radio supplies radio news at a wholesale level

- 5.9 Radio news and current affairs programming is delivered by the BBC through its national and regional radio services, as well as by national and local commercial radio stations. A range of UK-wide radio stations are available on analogue and digital as well as local commercial stations. In addition, some areas are served by community stations which may also deliver news and current affairs content.<sup>147</sup>
- 5.10 After the BBC, Global and Bauer attract the highest share of weekly listening across the services they own, followed by Wireless Group and Communicorp. Wireless Group is now a wholly owned part of News Corp, following its acquisition by News UK in September 2016. Sky News Radio, the radio arm of Sky News, supplies national and international news to Independent Radio News (IRN), a wholesale provider who supplies news services to the majority of commercial radio stations.

## News Corp publishes tabloid and broadsheet newspapers

- 5.11 The national printed newspaper market consists of 10 national daily and 10 Sunday titles.<sup>148</sup> These national titles are owned and published by eight commercial groups, set out in Figure 5.2.

**Figure 5.2 UK printed newspaper publications by publishers of the top 10 daily and top 10 Sunday titles**

Newspaper group	Publications (UK only)
News UK (wholly-owned by News Corp)	The Times, The Sunday Times, The Sun, The Sun on Sunday, The Scottish Sun
DMGT	The Daily Mail, The Mail on Sunday, Metro (distributed in cities and towns across the UK)
Trinity Mirror Group	The Daily Mirror, The Sunday Mirror, The Sunday People, The Daily Record, The Western Mail, Wales on Sunday, and a range of local titles in Northern England, Surrey and Berkshire
Northern and Shell	The Daily Express, The Sunday Express, The Daily Star
Telegraph Media Group	The Daily Telegraph, The Sunday Telegraph
Guardian Media Group	The Guardian, The Observer
Johnston Press	The i and a range of local and regional titles, including The Scotman and The Yorkshire Post
Nikkei	The Financial Times

- 5.12 Some regional or local titles also contain significant amounts of national and international news. There are over 600 titles at a regional and local level, mostly comprised of paid weeklies and some daily titles.<sup>149</sup> The three biggest publishers of regional press titles are Trinity Mirror Group, Newsquest and Johnston Press. The

<sup>147</sup> Ofcom, (August 2016). *The Communications Market Report*. <https://www.ofcom.org.uk/research-and-data/cmr/cmr16>

<sup>148</sup> These are the titles measured by the National Readership Survey (NRS), apart from the Financial Times.

<sup>149</sup> This figure is the total number of newspapers measured by JICREG.

print market also includes several periodic news and current affairs magazines such as The Economist, The Week, The New Statesman and Private Eye.<sup>150</sup>

- 5.13 The Lebedev Foundation previously published print editions of The Independent and The Independent on Sunday, which they turned into online only publications in 2016. The Lebedev Foundation also publishes The London Evening Standard. While The London Evening Standard and Metro are not UK-wide titles and are not captured in the data we use to measure consumption in Section 6<sup>151</sup>, these two titles are cited by respondents to our News Consumption Survey as being read for national news, as are various local press titles.<sup>152</sup>
- 5.14 Since 2010, two national newspapers have closed (News of the World and New Day – the latter launched and closed in 2016), and as noted above two have ceased print publication and moved exclusively online (The Independent and the Independent on Sunday). Two newspapers have launched in the same period: The Sun on Sunday in 2013 and The New European in 2016. On a local and regional level, between 2012 and 2016 there was a net reduction of 26 newspapers.<sup>153</sup>

### **Like the majority of traditional providers, Fox, Sky and News Corp also have an online presence**

- 5.15 As noted in Section 4, a wide range of websites provide news and current affairs content in the online news market, offering a diverse range of viewpoints. Many producers of online news are traditional providers with an established presence on another platform. The internet has also expanded the reach of international news providers, such as The New York Times.
- 5.16 In recent years, some online only news organisations have also emerged. The most popular include BuzzFeed and The Huffington Post, with a long tail of smaller online news providers. User-generated content, including blogs and posts on Facebook and Twitter, provide further context and opinion on issues in the news. Intermediaries play an increasingly important role in distributing and monetising content, but do not typically produce news.
- 5.17 Sky and Fox have an online presence through their news websites, Sky News and Fox News, but also on social media sites and through news aggregators. News Corp's print titles, including The Sun and The Times, have online versions and presences on social media.

### **The transaction has a limited impact on the availability of news**

- 5.18 The transaction would not result in a significant change in the range or number of providers across the different platforms. However, availability is only one part of our

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<sup>150</sup> We have focused on NRS newspaper readership data in Section 6, and so periodic news and current affairs magazines are not captured in this data.

<sup>151</sup> It is possible to look at 5-day, 6-day and 7-day average issue readership from the NRS. We have chosen 6-day for individual UK-wide titles and 7-day for the publisher nets. This means in general excluding the free titles Metro and the Evening Standard as they are published Mon-Fri. We have opted to use 6-day readership due to its position as the industry standard. Further detail is available in Annex 3.

<sup>152</sup> See Annex 3 for information about which news sources are included in publisher net figures using the NCS.

<sup>153</sup> Press Gazette, (December 2016). *New research: Some 198 UK local newspapers have closed since 2005.* <http://www.pressgazette.co.uk/new-research-some-198-uk-local-newspapers-have-closed-since-2005/>

measurement framework, and does not indicate how much different sources are used or the relative impact and influence different sources have, which we consider in the following sections.

## Section 6

# Consumption

## Summary

- 6.1 In this section, we assess how the transaction may affect the levels of consumption of different news sources. The transaction would give the Murdoch Family Trust material influence over news providers with significant positions on television, radio, printed newspapers and online. This position would be unique in the UK.
- 6.1.1 **Television:** Sky News was used for national and international news on a weekly basis by an average of 9% of adults. It was the fifth most viewed source of television news based on weekly reach and the fourth most viewed source of television news across all channels based on time spent.<sup>154</sup> For current affairs, Sky News has the fifth highest average weekly reach and share of total time spent watching current affairs.<sup>155</sup>
- 6.1.2 **Printed newspapers:** News Corp's collection of print titles are the most widely read UK-wide titles of any newspaper group, with a reach of 15% in 2016.<sup>156</sup>
- 6.1.3 **Radio:** Sky and News Corp each have a significant presence on radio. Sky is the sole supplier to Independent Radio Network (IRN), which supplies most commercial radio stations with news; while News Corp owns Wireless Group, which includes talkSPORT, talkRADIO and Virgin Radio.
- 6.1.4 **Online:** 70% of internet users use either The Sun or Sky News online.<sup>157</sup> Sky and News Corp also submitted data that suggests that Sky News and The Sun receive millions of monthly visitors from intermediaries, and that these audiences have grown substantially since July 2016.
- 6.2 By bringing together the largest UK-wide newspaper group with one of only three significant wholesale providers of television news and current affairs, both of which may have extensive reach online and through intermediaries, the transaction would increase the reach and share of consumption of news providers under the material influence of the Murdoch Family Trust.
- 6.3 At a wholesale level, following the transaction the combined Fox/Sky and News Corp would be used for news by three in ten adults (31%) who consume news on any of the main platforms. This figure is lower than the BBC's cross-platform reach (77%) or ITN's (39%) but significantly higher than DMGT (17%), the next biggest provider.<sup>158</sup>
- 6.4 The transaction would also give Fox/Sky and News Corp one of the highest wholesale shares of reference, at 10%. This share would be lower than that of the

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<sup>154</sup> BARB. See Annex 3 for more detail.

<sup>155</sup> *ibid.*

<sup>156</sup> NRS, any UK-wide newspaper, 7-day Average Issue Readership, 2016.

<sup>157</sup> Based on comScore MMX Multi-Platform 18+. Audience duplication tool, combining The Sun Online and Sky News for April 2017.

<sup>158</sup> *ibid.*

BBC (42%), broadly in line with that of ITN (11%), and significantly higher than that of DMGT (4%), the next biggest provider.<sup>159</sup>

- 6.5 We note that there are commercial reasons that suggest that the share of reference of Fox/Sky and News Corp may understate the strength of its voice compared to ITN, which has a similar share of reference. The difference in their respective strength of voice is partly due to the business need for ITN to reflect the preferred styles, tones and editorial approaches of the retail news providers with which it provides news under contract (ITV, Channel 4 and Channel 5), which limits its ability to harmonise one editorial voice across its services.

## **Measuring consumption helps us to understand which sources people use**

- 6.6 Understanding the range of news sources available gives a sense of the amount of news sources that people could potentially use. But availability alone cannot inform a full assessment of plurality. Consumption metrics build on this by helping us understand the number of people using different news sources and how much people use those news sources (as a percentage of overall news consumption of that type of content).
- 6.7 We set out in Section 3 that we believe the relevant audience for this public interest test is the UK-wide audience for news and current affairs. We have considered differences in consumption patterns between different audience subgroups, segmented by age, socioeconomic group or UK nation. Overall, we do not believe any one subgroup would be disproportionately affected by the transaction.

## **We use a range of metrics to analyse consumption**

- 6.8 In Section 5, we set out the availability of Fox, Sky and News Corp on television, radio, printed newspapers and online. As there is no single industry metric which measures consumption across all of these platforms, we use a combination of established industry data sources to measure consumption on each of these platforms<sup>160</sup>, and data from our News Consumption Survey to measure cross-platform consumption.

## **The transaction would give the Murdoch Family Trust material influence over significant news providers on all four platforms, allowing it to reach a wider range of people**

- 6.9 The transaction would mean the Murdoch Family Trust would have material influence over significant providers of news on all four platforms. The presence of news providers influenced by the Murdoch Family Trust on all four platforms may, if the voice of these providers is coordinated, allow the Murdoch Family Trust to more

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<sup>159</sup> Ofcom News Consumption Survey 2016.

<sup>160</sup> Wherever possible we have relied upon industry metrics as the basis of our analysis within each platform because they are robust, replicable, use transparent methodologies and are widely recognised. Where relevant we have highlighted any significant caveats linked to the methodology used by a particular measure. Additional information is available in Annex 3 and the Ofcom News Consumption Survey 2016.

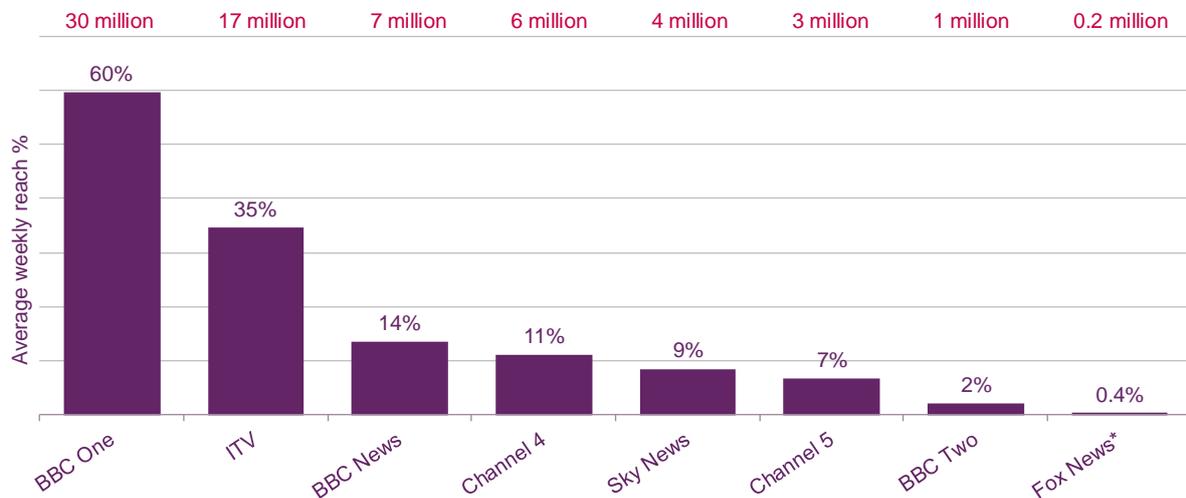
easily reach a wider range of people. It may also increase the Murdoch Family Trust’s ability to set the wider news agenda, which we discuss in Section 8.

### Sky News is the second biggest dedicated UK news channel

- 6.10 BBC One is the most widely watched channel for national and international television news programming in the UK. It had an average weekly reach of 60% among adults<sup>161</sup> in 2016, about seven times larger than Sky News, which ranked fifth, with an average weekly reach of 9%.<sup>162</sup> Sky News accounted for 7% of the total time spent watching television news among adults in 2016, making it the fourth most viewed source of television news across all channels in terms of time spent. Sky News is the second most watched dedicated news channel<sup>163</sup>, after BBC News.
- 6.11 For television current affairs<sup>164</sup>, Sky News has the fifth highest average weekly reach and share of the total time spent watching television current affairs. Four per cent of the adult population watched current affairs programming on Sky News in a typical week in 2016<sup>165</sup>, and it accounted for 8% of total viewing time to television current affairs.
- 6.12 The Fox News television channel<sup>166</sup> is only available on Sky’s television platform, and its average weekly reach (0.4%) and total viewing time (21 minutes per person per year) for all adults are much lower than Sky News. Older viewers are more likely to watch the channel than younger viewers.

**Figure 6.1 Average weekly reach to national/international news by channel – Adults 16+, 2016<sup>167</sup>**

Average weekly reach (%) and number of viewers



<sup>161</sup> Defined as people aged 16+.

<sup>162</sup> BARB. See Annex 3 for more detail.

<sup>163</sup> These include international, dedicated news channels, many of which are foreign language.

<sup>164</sup> BARB. See Annex 3 for more detail.

<sup>165</sup> *ibid.*

<sup>166</sup> BARB analysis of Fox News is based on the channel as a whole because it does not report programme-level data to enable analysis of viewing only to programmes in the national/international news sub-genre.

<sup>167</sup> BARB. See Annex 3 for more detail.

Source: BARB

Note: 4+ viewing to network programming in the national / international news genre, for 3+ consecutive minutes. Channels include HD and +1 variants. \*Viewing to the BBC, ITN, Sky and 'Others' wholesale groups is based on viewing to the national/international news genre, while viewing to Fox News is based on viewing to the channel as a whole, including all types of programming because it does not report programme level data to BARB.

## News Corp has the widest reach of any newspaper group

- 6.13 As noted in Section 4, the number of people reading newspapers is declining. Printed newspaper circulation has fallen in recent years (from 9 million in January – June 2010 to 6 million in July – December 2016).<sup>168</sup> But printed newspapers continue to play an important part in the delivery of news, with a weekly reach of 33%.<sup>169</sup> Some titles have been more affected by this market-wide decline than others. The Sun has been particularly hit, with the number of people reading the print version roughly halving between 2010 and 2016 (Figure 6.2). However, within a declining market, News Corp remains a significant player.
- 6.14 According to NRS, News Corp's print titles are the most widely read UK-wide titles of any newspaper group, with a reach of 15% in 2016.<sup>170</sup> However, the NRS's 6-day, UK-wide title average issue readership definition does not include DMGT's free newspaper, Metro. If we were to add Metro's reach to that of the Daily Mail, DMGT's total reach would increase from 10% to 15% according to NRS meaning it would match News Corp.
- 6.15 News Corp's most popular title, The Sun, remains the most widely read daily printed newspaper in Great Britain, reaching 7% of all adults, slightly ahead of the Daily Mail (6%). The Times has similar reach to other broadsheet newspapers, at around 2%. The Sunday sister titles of both The Sun and The Times have similar reach to the weekday titles (7% for The Sun on Sunday and 3% for The Sunday Times).
- 6.16 Nearly all printed newspapers, including the News Corp titles, have wider reach among older people. However, the age distribution of News Corp's readership is less polarised than it is for the rest of the market. News Corp has an 11% reach among 15-24s, which steadily increases to 17% among people aged 65+. News Corp has a smaller difference in reach between the youngest and oldest age groups largely because The Sun and The Sun on Sunday reach a larger number of younger people than any other titles. News Corp has similar reach among AB (13%) and DE (16%) groups because the readership of its major titles cuts across different socioeconomic groups.
- 6.17 The Sun and The Sun on Sunday have more than offset their declining print readership through the growth of online readers. Overall readership has increased from 15 million in 2015 to 26 million in 2016. In 2015, monthly average print only readership across all titles was 11 million (74% of its combined average monthly readership across print and online), falling to 5 million (21%) in 2016.<sup>171</sup> Over the same period, The Sun's online only readership grew from 2 million (16% of its combined readership) to 17 million (64%), in part supported by the removal of its paywall on 30 November 2015. The number of people using both print and online editions increased from 1 million (9%) to 4 million (15%).

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<sup>168</sup> National daily titles only.

<sup>169</sup> NRS, 7-day Average Issue Readership, Jan-Dec 2016, UK-wide titles only.

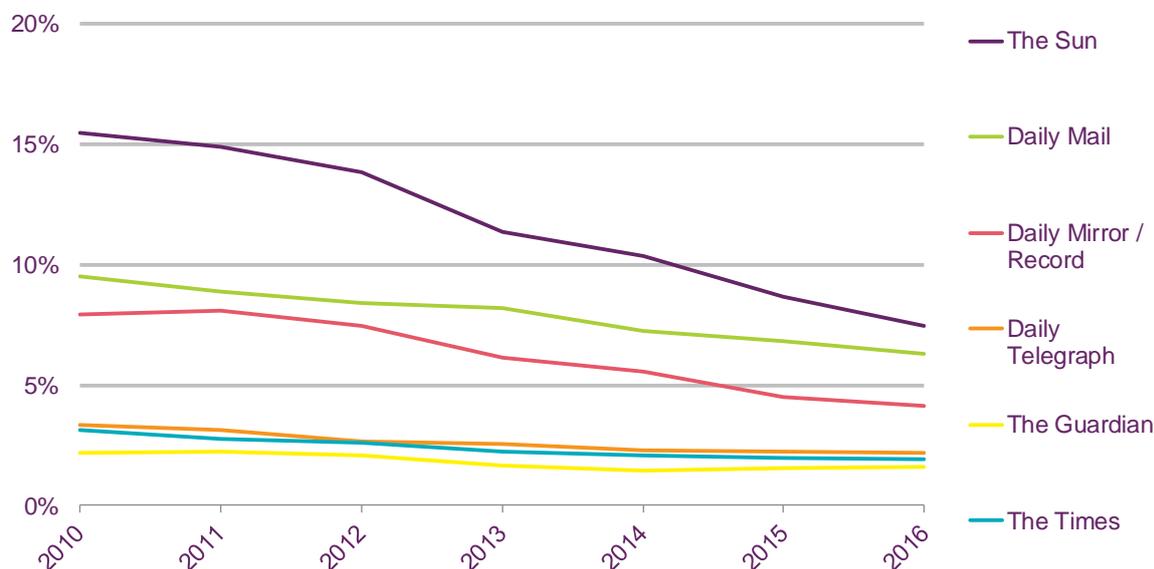
<sup>170</sup> NRS does not measure newspaper reach in Northern Ireland.

<sup>171</sup> NRS PADD: mobile and tablet – NRS hybrid methodology that incorporates publisher's digital audiences as reported by comScore.

6.18 The Times and The Sunday Times are the only UK-wide newspapers whose print readership is larger than their online users. Seventy per cent of their monthly average readership used only the print edition in 2016, while 20% were online only and 10% used both print and online.

**Figure 6.2 Print reach of the six largest national UK newspapers, 2010-2016**

Reach (6-day average issue readership) (%)



Source: National Readership Survey / Kantar Media analysis

Note: Average readership for Monday-Saturday over January-December of the stated year

**Sky and News Corp are not the largest providers of radio news, but still have a combined reach of 12% at the wholesale level**

6.19 Radio is used by 33% of adults in the UK for news.<sup>172</sup> According to RAJAR figures<sup>173</sup>, only five radio providers are used by more than 1% of adults at a retail level: the BBC, Global, Bauer, Wireless Group (controlled by News Corp) and Communicorp.<sup>174</sup> Wireless Group has a significantly lower reach than Global and Bauer.

6.20 At the wholesale level, a similar picture emerges with five providers having a reach of greater than 1% (BBC, Global, Bauer, Wireless Group and IRN). As RAJAR figures split by genre are not available, we use stations' overall reach figures as a proxy for the consumption of their news sources.

6.21 Sky News is the current news producer for IRN, which supplies news services to the majority of commercial stations including Bauer and Global, the two largest commercial operators. Individual stations can choose how much IRN content they use. Their options include story scripts, audio clips, pre-prepared story audio packages and full news bulletins. IRN supplies news services to the majority of commercial stations.

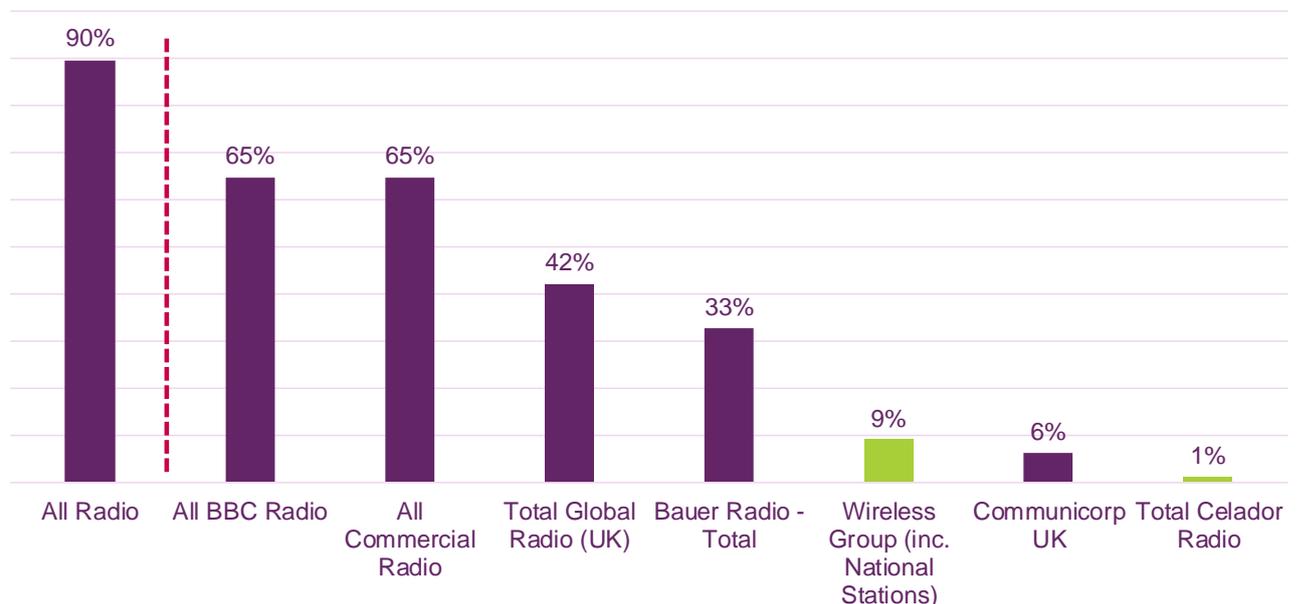
<sup>172</sup> Ofcom News Consumption Survey 2016.

<sup>173</sup> RAJAR. See Annex 3 for more detail.

<sup>174</sup> For the purposes of our analysis, we have aggregated commercial radio stations under their parent group.

- 6.22 In determining how to allocate reach of radio news at the wholesale level, we have considered whether the major radio station groups rely substantially on IRN's wholesale news content, or whether the stations themselves retain primary editorial control.
- 6.23 Bauer and Global told us that their own news operations exercise substantial editorial control, including the sourcing of news content beyond IRN. We have corroborated this through sampling the news output of these groups and through asking both Sky and the commercial radio groups how they source and produce their national news.
- 6.24 Some respondents to our invitation to comment<sup>175</sup> felt that, if we did not allocate commercial radio listening to Sky at the wholesale level, this would understate Sky's influence over the news agenda of these commercial radio groups. The Media Reform Coalition cited evidence which indicated that news bulletins on different commercial radio stations featured consistent news headlines, and said that this supposed homogeneity of news agenda suggested Sky maintained influence over this news output. We recognise that in practice the distinction between wholesale and retail news providers is not always clear cut, and that Sky may still (through IRN) retain some degree of editorial influence over Bauer's and Global's news output, for example through the ability to omit certain items from the IRN feed.
- 6.25 Our view is that the balance of evidence points to Global and Bauer as wholesale news producers and to Sky as the wholesale news supplier for the smaller commercial radio groups that rely on IRN content. This approach is in line with our 2015 News Consumption Report. Annex 3 sets out the detailed methodology.

**Figure 6.3 Weekly reach (%) across the UK by radio group, 2016<sup>176</sup>**



Source: RAJAR Q4 2016

Note: News Corp owns Wireless Group; Sky provides news content to Celador Radio group via IRN. Global supplies news services to Communicorp.

<sup>175</sup> Media Reform Coalition; Professor Steven Barnett; and Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer.

<sup>176</sup> RAJAR. See Annex 3 for more detail.

## Measuring news consumption online is less straightforward than it is for other platforms

6.26 Measuring news consumption online is difficult and the online news market is complex. A wide range of outlets is available, as set out in Section 5, and most are accessible through various routes and on a range of devices. For example, people can access online news content from a news outlet's webpage, a dedicated app, a third-party news aggregator or social media, and they can do so using a desktop PC, laptop, smartphone or a tablet. As a result, measuring news consumption online is less straightforward than it is for the other platforms, and industry measurements are still developing. Where possible, we have made methodological choices to ensure that the data we present are robust, comparable and can be replicated. Our decisions and the reasons behind them are set out in greater detail in Annex 3.

## Evidence suggests the websites of The Sun and Sky News are widely used

6.27 Fox argued that the “*extraordinary expansion of online news provision*” has undermined the reach of traditional media outlets.<sup>177</sup> In contrast, several respondents to our invitation to comment<sup>178</sup> argued that the rise of online news is not creating greater plurality. These respondents argued that while the rise of online is generally held to be a force for greater news plurality, this does not mean that control over news production has become more dispersed. They argued instead that online distribution amplifies the reach of existing news providers, including News Corp titles, despite the illusion of there being more content available.

6.28 We have used comScore data to analyse online consumption. comScore is the industry recognised standard and measures consumption via a news provider's website. Due to comScore's methodology, we can more consistently measure online consumption for a greater number of providers if we only include consumption via desktop and laptop computers rather than including mobile and tablet consumption.

6.29 According to comScore<sup>179</sup>, Sky News had a reach of 4% among people who used the internet on a desktop or laptop<sup>180</sup> in April 2017. In the same month, 10% used The Sun's website, which made it the sixth most popular site offering news content that month. Use of The Sun's website has increased since it removed its paywall in 2015. In comparison, the BBC was the most widely used site offering news content, with a reach of 44%, followed by the Mail Online with 21%.

6.30 However, news consumption on desktops and laptops is only part of the picture. As set out in Section 4, smartphones have become the most popular device to access the internet, and are used by many people to consume online news. The reach of news providers on mobile devices is not captured in the data set out above. All major news providers now offer their websites through smartphone- and tablet-optimised websites and apps and are likely to see significant consumption through these. However, while mobile devices offer all online news providers a bigger potential

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<sup>177</sup> Fox, (March 2017). *Initial submission to Ofcom*, p.15.

<sup>178</sup> Media Reform Coalition; the NUJ; Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; [redacted]; Professor Steven Barnett; and [redacted].

<sup>179</sup> Based on comScore MMX, home and work panel, April 2017, 18+. Using the comScore category: News / Information.

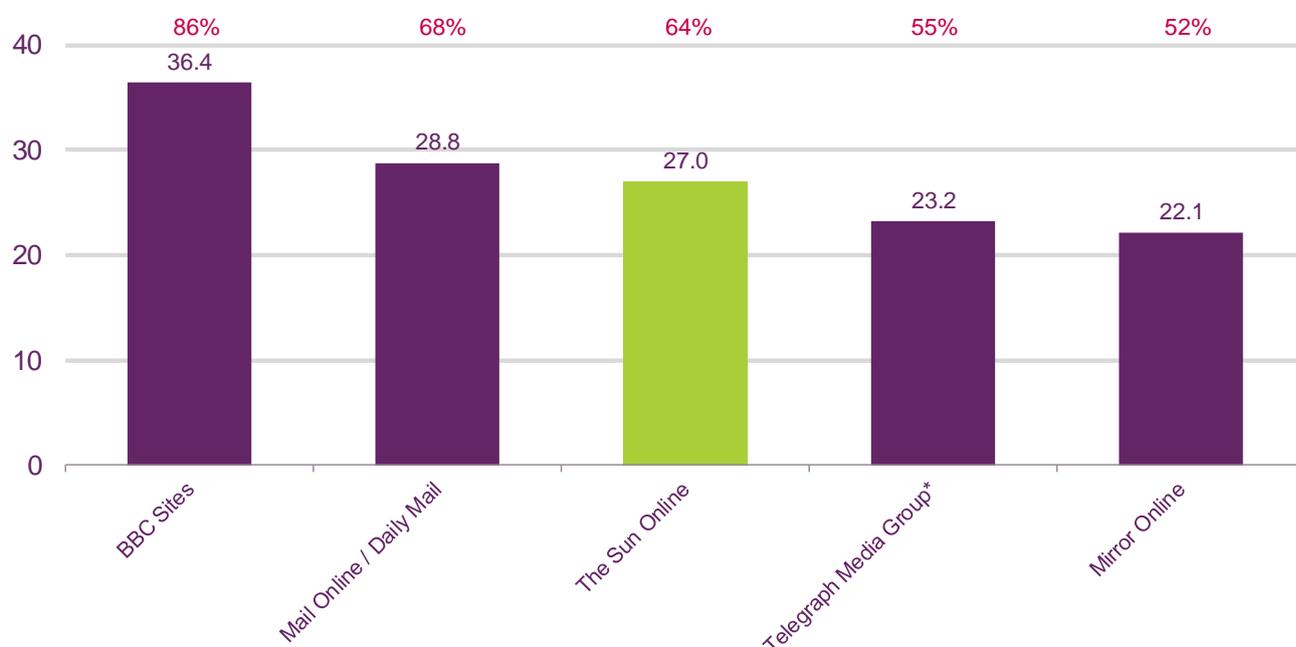
<sup>180</sup> Reach figure is calculated based on the total UK digital population on comScore (around 39 million people). Multi-Platform reach figure is just above 42 million people.

audience, we believe that The Sun may see a larger increase in reach than some other providers.

- 6.31 Some news providers have a large audience on mobile devices, while others attract more users on desktops and laptops. As a result, we cannot make accurate assumptions about a news provider’s total level of online consumption across all devices based on desktop and laptop data alone.
- 6.32 To measure online consumption including mobile devices, we can look at a subset of news providers according to comScore. We have included the five largest providers as of April 2017 because they have a generally consistent and comparable methodology to measure the size of their audiences through both desktop and mobile devices.<sup>181</sup>

**Figure 6.4 Reach of top 5 news websites (desktop, laptop and mobile devices), April 2017**

Reach age 18+ (millions and percentage of total digital audience)



Source: comScore MMX Multi-Platform, April 2017

Notes: Age 18+, Includes desktop and mobile use. \*Telegraph Media Group smartphone and tablet data is the only entity charted which is supported by panel only data and not through a unification of panel and census like other entities.

- 6.33 Figure 6.4 shows that The Sun’s combined desktop, laptop and mobile reach (27m) is almost seven times greater than its reach among desktop and laptop users alone (4m), based on comScore metrics. This compares to the Mail Online which reaches just over three and a half times as many people when mobile is included (moving from a reach of 8m on desktop and laptop to 28.8m across desktop, laptop and mobile).

<sup>181</sup> See Annex 3 for further information on this methodology.

- 6.34 The Sky News and The Times websites have lower reach than The Sun. Sky News reached 8.5 million adults in April 2017, or 20% of the online audience, while The Times reached 5.5m adults, or 13% of the online audience.<sup>182</sup>

### **The available evidence suggests there is substantial consumption of Sky News and The Sun news content through intermediaries**

- 6.35 As noted above, comScore measures the online consumption of individual webpages, and allows us to measure traffic to individual news sources online. But as set out in Section 4, intermediaries are a growing route for news consumption online.<sup>183</sup> Intermediaries do not produce news themselves but link to stories from other news providers, or provide news and current affairs generated by users.
- 6.36 There is no definitive evidence available on the level of consumption of Fox, Sky and News Corp news sources through intermediaries, relative to other news providers. Our News Consumption Survey does not tell us the extent to which individual news sources are consumed through intermediaries. Additionally, industry metrics do not allow us to understand the full extent of consumption through intermediaries. While Sky and News Corp have supplied information on their consumption that goes through selected intermediaries, this information is not available for all intermediaries and we do not have access to information from competitors to compare against.
- 6.37 However, we do have some evidence that suggests that a significant amount of consumption of Fox, Sky and News Corp news content takes place through intermediaries:
- 6.37.1 **Consumption through news aggregators:** News aggregators like Yahoo News and Google News provide access to stories from a range of publishers, including the News Corp titles and Sky News. Sky News content accounted for the largest share of Yahoo News stories in February 2017, making up around a quarter of all stories and more than 60% of headline stories.<sup>184</sup> The Media Reform Coalition said that “*Sky has a dominant presence on [Yahoo News], especially within leading headlines*”.
- 6.37.2 **Audiences on social media:** Evidence suggests that both The Sun and Sky News attract large UK audiences on Facebook, based on the number of ‘likes’ that they have received to their pages from UK consumers. The Sun is the second most popular news and current affairs related page among UK Facebook users and Sky News is fourth, behind BBC News and The Guardian (Figure 6.5).

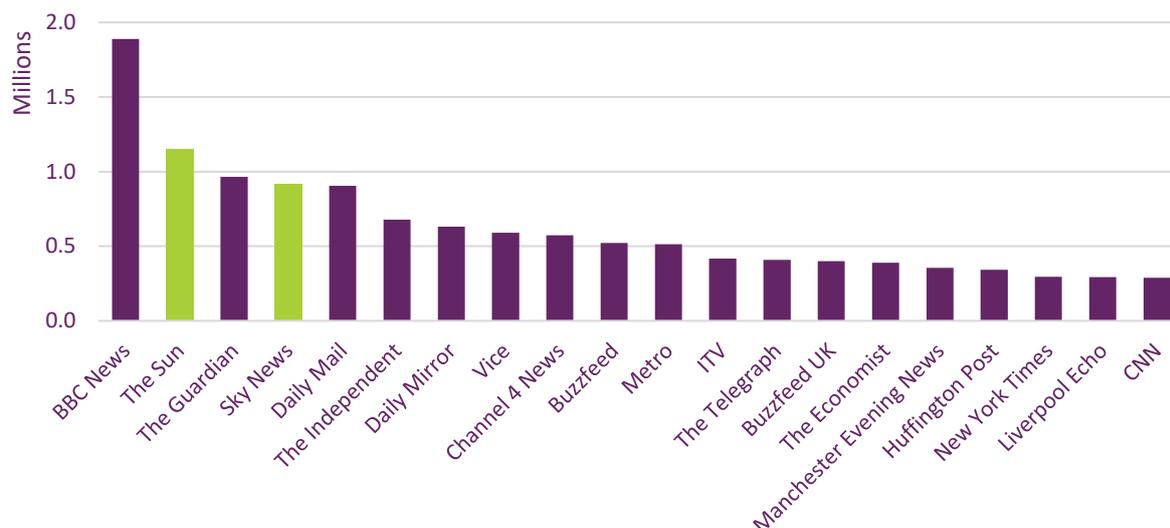
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<sup>182</sup> The Times Online tablet data is panel only and is not unified.

<sup>183</sup> Ofcom News Consumption Survey 2016.

<sup>184</sup> Media Reform Coalition; and Joint Trade Union.

**Figure 6.5 Facebook ‘likes’ from UK based users, 20 largest news and current affairs pages<sup>185</sup>**



Source: Socialbakers

6.37.3 **Consumption through third-party services:** Some intermediaries provide publishing tools for news providers. Both The Sun and Sky News are represented across a wide selection of these third-party services, such as Google AMP,<sup>186</sup> Facebook Instant Articles, Apple News and Snapchat. Information provided by Sky and News Corp suggests that audiences have grown substantially between July 2016 and March 2017. [redacted].<sup>187</sup>

**Figure 6.6** [redacted]<sup>188</sup>

[redacted]

Source: Data submitted by News Corp

**Figure 6.7** [redacted]<sup>189</sup>

[redacted]

Source: Data submitted by Sky

6.38 While we cannot be certain how much of the reach of Sky News and the News Corp titles through intermediaries is additional to their reach as measured by comScore or our News Consumption Survey, this evidence suggests that the overall reach and share of consumption of Sky News and The Sun is likely to be significantly higher when accounting for intermediaries. [redacted]. These figures compare to 1% of all adults who say they use The Sun website for news in our News Consumption Survey. It

<sup>185</sup> Data was sorted by ‘local fans’ and pages were included if they were not an intermediary and if the relevant brand had been mentioned in the Ofcom News Consumption Survey 2016 at least once.

<https://www.socialbakers.com/statistics/facebook/pages/local/united-kingdom/media>

<sup>186</sup> Google AMP (Accelerated Mobile Pages) is an online publishing format, created by Google, that is similar to HTML and optimized for mobile web browsing. Pages using AMP are cached on Google servers and receive prioritisation in Google Search results.

<sup>187</sup> [redacted]

<sup>188</sup> News Corp’s response to an information request from Ofcom.

<sup>189</sup> Sky’s response to an information request from Ofcom.

suggests that the News Consumption Survey may underestimate the reach of The Sun and Sky News.

- 6.39 Although it is likely that the reach of *all* traditional news sources with an online presence will be boosted by intermediaries (particularly those that do not use paywalls), the strong performance of Sky News and The Sun on Facebook and through third party services suggests that they may see a larger increase in their reach and share of reference than many other providers when news consumption from intermediaries is taken into account.

## **Following the transaction, Fox, Sky and News Corp would be among the highest levels of cross-platform reach**

### **Sky News and News Corp are currently the third and fifth most widely used news sources across all platforms**

- 6.40 According to our News Consumption Survey, Sky and News Corp are currently the third and fifth most widely used news providers across all the main platforms. At a retail level, Sky has a cross-platform reach of 21%, lower than the BBC (77%) and ITV (34%). DMGT's reach is 17%. News Corp has a cross-platform reach of 14%. News Corp's reach is at least twice as high as the other newspaper groups (Guardian Media Group, Trinity Mirror and Telegraph Media Group). Fox has a low reach in the UK and is used by approximately 1% of adults who consume news on television, radio, printed newspapers or online (Figure 6.8).
- 6.41 At a wholesale level, Sky and News Corp are also the third and fifth most widely used news providers. ITN, a wholesaler news provider supplying news to ITV, Channel 4 and Channel 5, is the second most widely news source with a cross-platform reach of 39%. Fox has no wholesale news agreements in the UK (Figure 6.9).

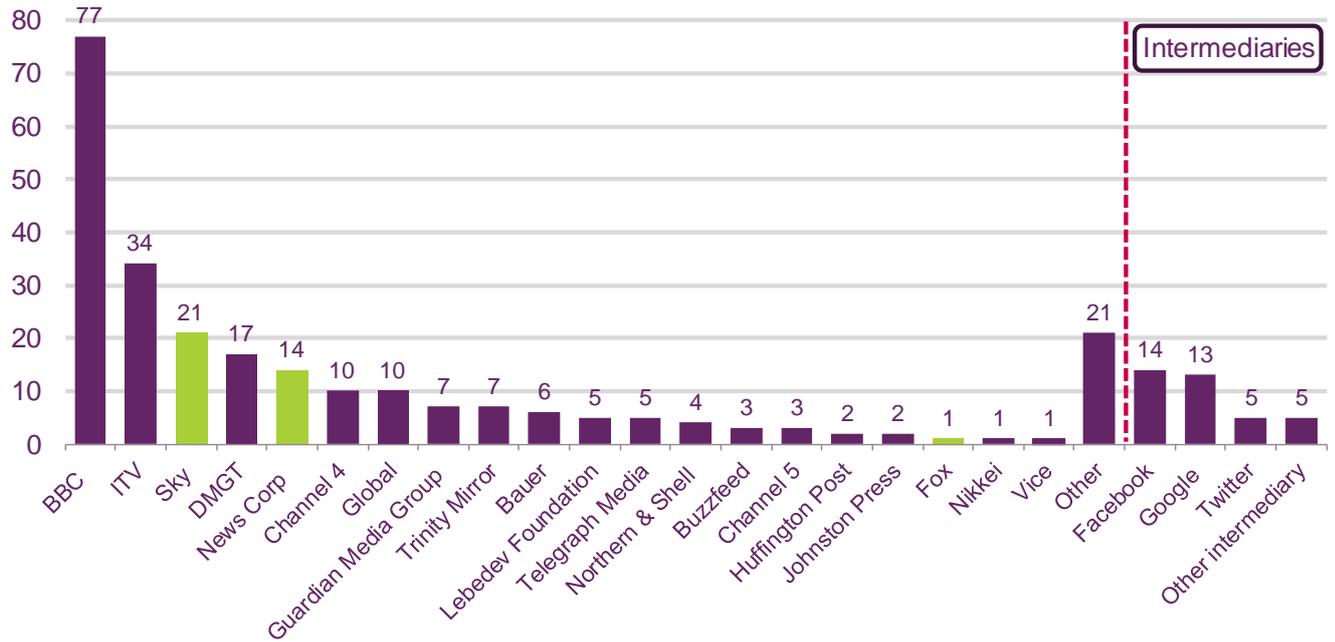
### **Following the transaction, Fox/Sky and News Corp would be used for news by three in ten adults**

- 6.42 Following the transaction, Fox/Sky and News Corp would have one of the highest levels of cross-platform reach of any news provider at both the retail and wholesale level. Based on current consumption levels, at a retail level, Fox/Sky and News Corp would be used for news by three in ten adults (30%)<sup>190</sup>, making it the third most widely used news provider, and closing the gap with ITV (34%). The difference in reach between Fox/Sky and News Corp and the next largest news provider, DMGT, would increase.
- 6.43 At a retail level, Fox/Sky and News Corp would reach around three times as many people as Global Radio and Channel 4, the next most widely used news providers after DMGT, and more than four times more than the next most widely used newspaper groups after DMGT: Guardian Media Group and Trinity Mirror (Figure 6.8). At a wholesale level, Fox/Sky and News Corp would again be the third most widely used news provider, with a cross-platform reach of 31% (Figure 6.9).

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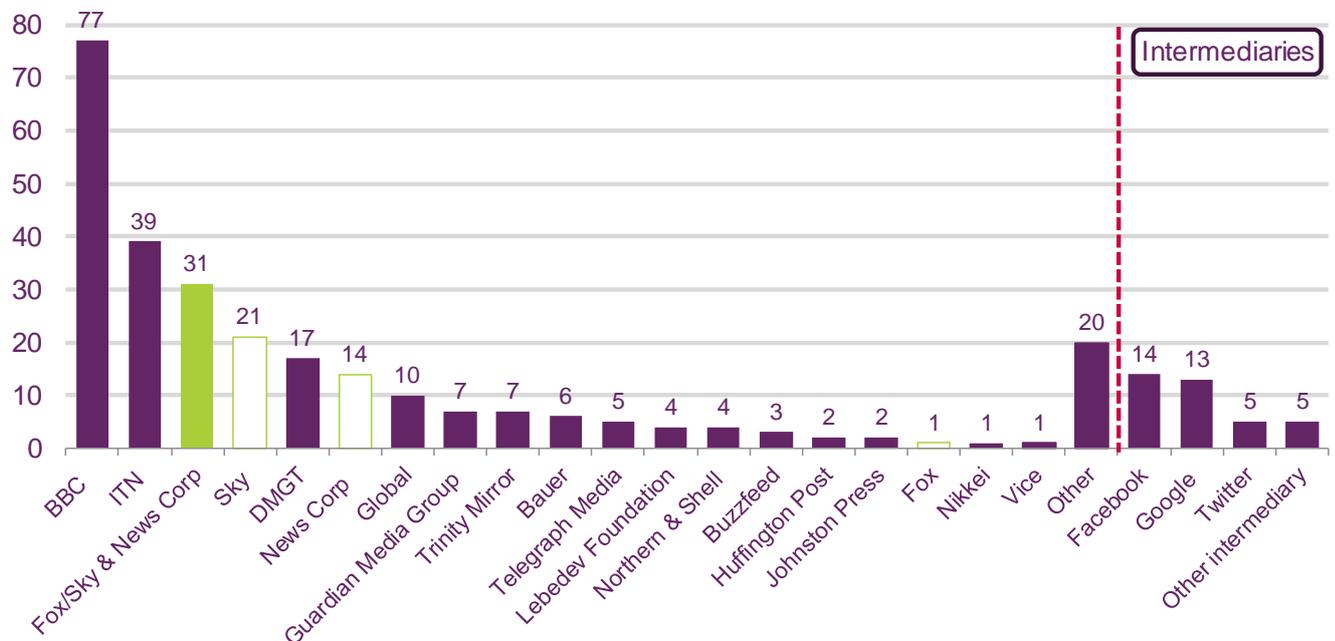
<sup>190</sup> The combined cross-platform reach of Fox, Sky and News Corp is less than the sum of the individual cross-platform reach of Sky, News Corp and Fox because some people are reached by more than one of Sky, News Corp and Fox. These consumers are therefore counted in the individual reach of both/all of these providers, but are only counted once for the combined reach.

**Figure 6.8 Retail cross-platform audience reach of providers used 'nowadays' for news: 2016**



Source: Ofcom News Consumption Survey 2016.  
 Base: All adults 16+ who use Television, Printed Newspapers, Radio, Internet, or Magazines for news nowadays (2659)  
 Notes: 'Google' contains all Google-named entities plus YouTube. 'Other intermediary' includes MSN, Yahoo, Feedly, Flipboard, News Now

**Figure 6.9 Wholesale cross-platform audience reach of providers used 'nowadays' for news: 2016**



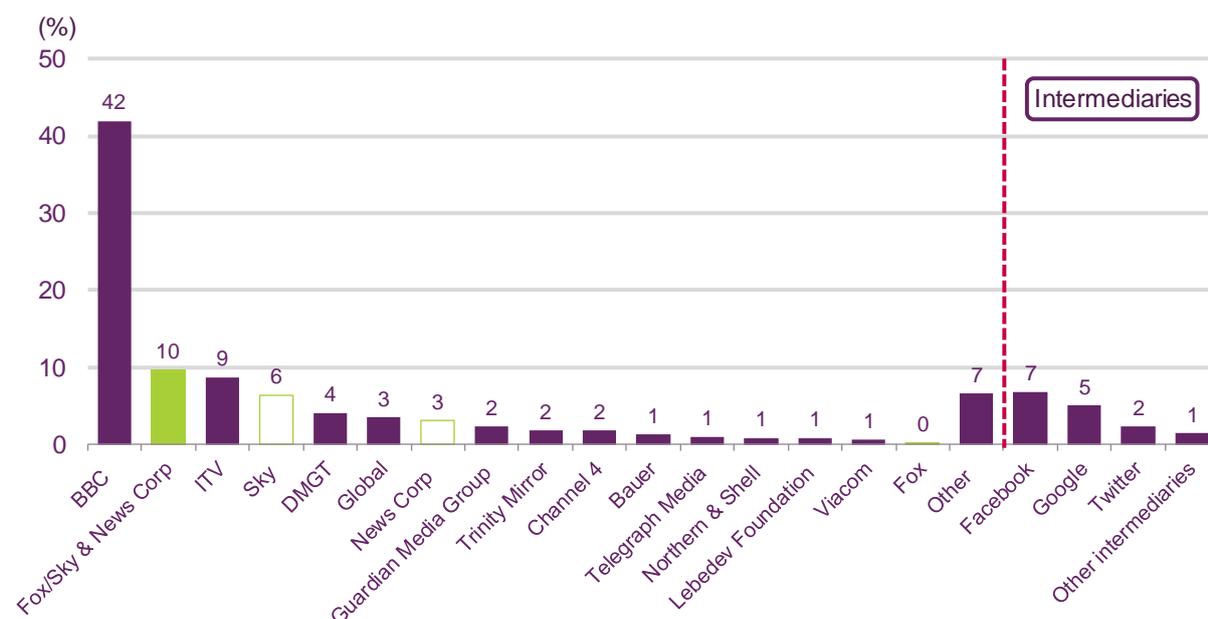
Source: Ofcom News Consumption Survey 2016.  
 Base: All adults 16+ who use TV, Printed Newspapers, Radio, Internet, or Magazines for news nowadays (2659)  
 Notes: 'Google' contains all Google-named entities plus YouTube. 'Other intermediary' includes MSN, Yahoo, Feedly, Flipboard, News Now

## **The proposed transaction would increase Fox/Sky and News Corp's cross-platform share of consumption**

**Following the transaction, Fox/Sky and News Corp would have a 10% share of reference at both the retail and the wholesale level**

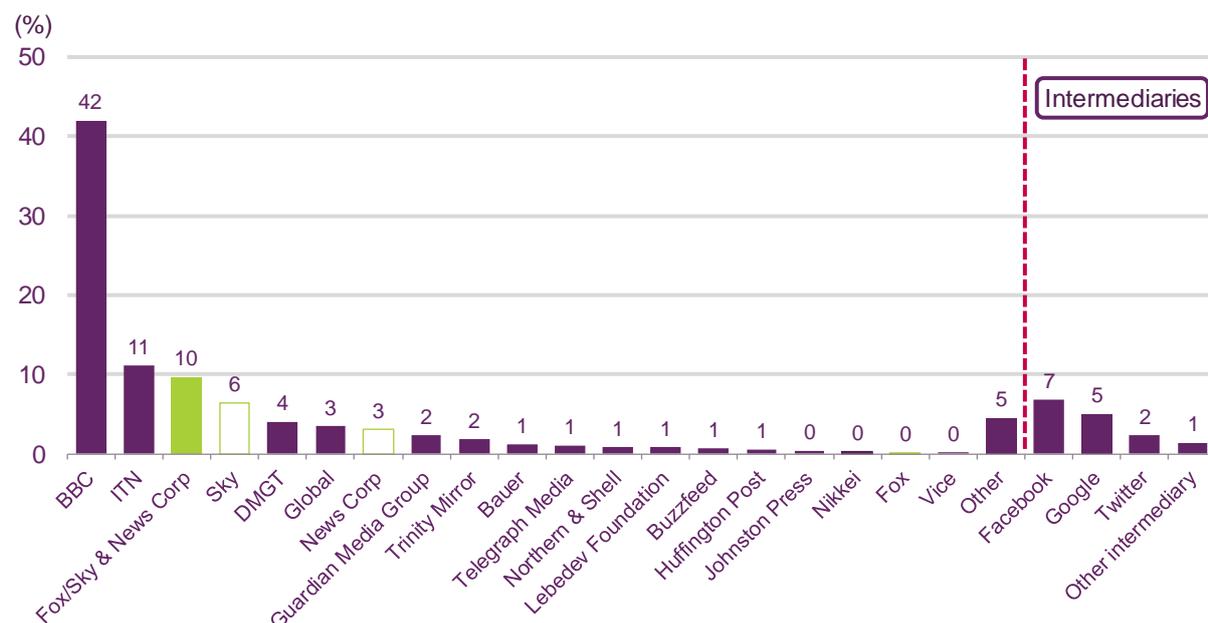
- 6.44 At a retail level, Sky currently has a 6% share of reference, lower than the BBC (42%) and ITV (9%). Facebook (7%) and Google (5%) have similar shares of reference to Sky but, as intermediaries, they typically link to a range of content produced by others rather than produce news themselves. News Corp's share of reference (3%) is similar to other newspaper groups, which range from 1-4%. Fox has a low share of reference, which rounds to 0% (Figure 6.10). At a wholesale level, the share of reference for Sky and News Corp is similar to the retail level (Figure 6.10).
- 6.45 At a retail level, following the transaction Fox/Sky and News Corp would account for 10% of the overall share of reference, broadly in line with ITV (9%), and double the share of reference of DMGT (4%), the next largest news provider. The rest of the market is more fragmented, with a range of major newspaper groups with 1-2% share (Figure 6.10). The transaction would make the News Corp newspapers part of a group with significantly larger share of reference than any other newspaper group. The results are similar at a wholesale level (Figure 6.11).
- 6.46 As noted above, evidence suggests that Sky News and The Sun in particular may have significant reach through their website and through intermediaries, which may not be reflected in our News Consumption Survey. The true share of reference of Fox/Sky and News Corp may therefore be significantly higher than is reflected in our analysis.
- 6.47 While Fox/Sky and News Corp have a similar wholesale share of reference to that of ITN, we note that there are commercial reasons which suggest that their shares are not directly comparable. There is a business need for ITN to reflect the preferred style, tone and editorial approach of the retail news providers with which it provides news under contract (ITV, Channel 4 and Channel 5). The ITN share may therefore be overstated in terms of the strength of voice accorded to it. Fox/Sky and News Corp may have a stronger voice than ITN despite comparable share of references.

**Figure 6.10 Retail share of reference following the proposed transaction:2016**



Source: Ofcom News Consumption Survey 2016  
Base: All who use a news source nowadays (2583)

**Figure 6.11 Wholesale share of reference following the proposed transaction: 2016**



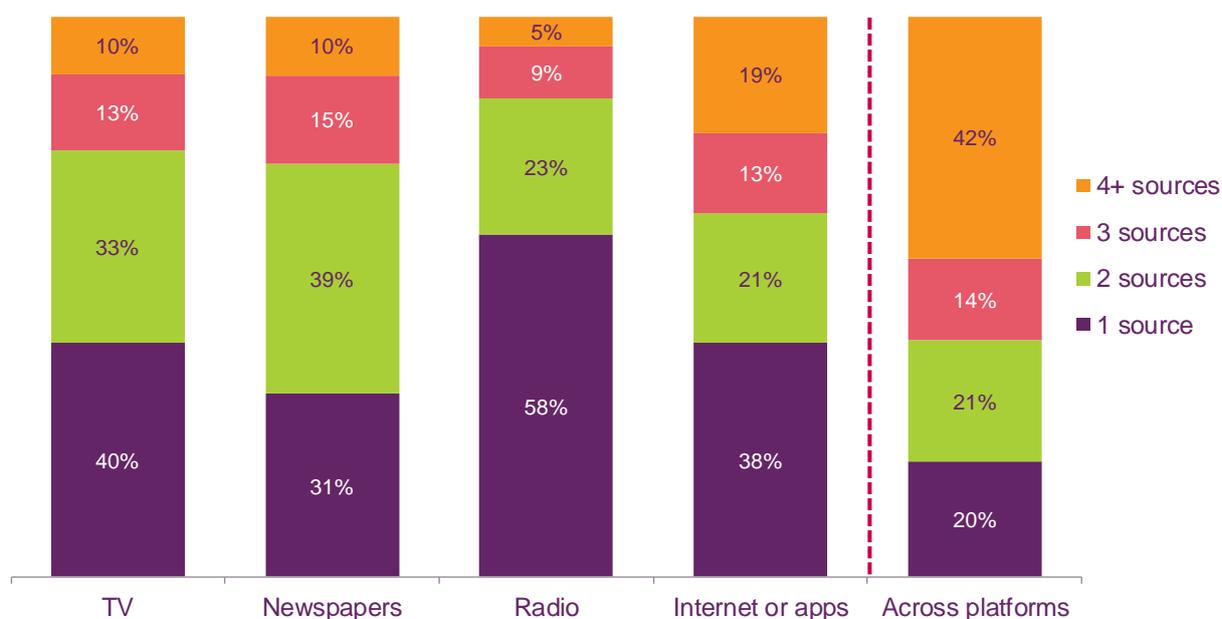
Source: Ofcom News Consumption Survey 2016.  
Base: All who use a news source nowadays (2583)

## Four in ten people use two or fewer individual news sources

6.48 Data on the share of consumption may provide an indication of the strength of voice of particular providers in the absence of other metrics. They may however, overstate that strength of voice depending upon whether audiences also use a wide range of other sources. Equally, they may understate the strength of voice of an individual news outlet if it is the only source of news for much of the audience.

- 6.49 Our News Consumption Survey allows us to analyse the number of different sources people use for news, e.g. BBC One, The Daily Telegraph website. Looking at the number of sources used per person allows us to consider plurality from the perspective of an individual, as distinct from society as a whole. According to our News Consumption Survey, people use an average of 3.8 different news sources, measured across all platforms. This figure has remained broadly the same since 2013, despite the wide range of sources available online.<sup>191</sup>
- 6.50 People tend to use more news sources on some platforms than others. On average, people who use the radio for news use fewer sources on the platform (1.5 radio sources) than people who use the internet (2.3 internet sources).
- 6.51 It is useful to supplement these mean averages with the distribution of sources that people use (Figure 6.12).<sup>192</sup> Our News Consumption Survey shows that across all platforms, some 41% of people use two or fewer individual news sources. Within each main platform, 81% of radio news listeners use two or fewer sources (58% use just one source); 73% of television news users; 70% of printed newspaper readers; and 59% of internet news users.

**Figure 6.12 Number of individual news sources used by platform**



Source: Ofcom News Consumption Survey 2016. Q5a to Q5f) Which of the following do you use for news nowadays?

Note: columns do not sum to 100% as some respondents did not name specific sources within a platform (zero sources)

- 6.52 These figures provide an understanding of the extent to which individual news sources are being used. It is also useful to group these individual sources into the main wholesale providers of news, to see the extent to which people are using a

<sup>191</sup> Ofcom News Consumption Survey 2016.

<sup>192</sup> For example, the mean average can be increased by a small number of people who use a large number of sources.

limited or wide range of editorial voices.<sup>193</sup> Over half of people (57%) use news sources from one or two wholesale news providers, e.g. News Corp, BBC.

- 6.53 Taken as a whole, we do not consider that the consumption data are in fact likely to overstate the strength of voice of the merged entity. With over half of the population using news sources from just one or two wholesale providers, the importance of those news sources is likely to be increased relative to the consumption data rather than decreased, because the voices of those providers are not being diluted by the voices of others.

## **News consumption habits are changing, particularly with the growth of online news**

### **Online news is growing, but has not yet transformed plurality**

- 6.54 As noted in Section 4, rapid growth in the provision and use of online news has disrupted the news market. A wide range of providers, offering a diverse range of viewpoints, is now available online. Intermediaries are changing the way news is discovered, and social media has played a significant role in disrupting the news cycle, facilitating discussion and giving people direct access to politicians, journalists and other public figures.
- 6.55 These changes for the news industry and for news consumption are ongoing and we expect them to continue. These changes have the potential to be transformative for news consumption and plurality in future.
- 6.56 However, we do not believe that growth in the use of online news in the short term is likely to lead to a significant expansion in plurality in the long term. As noted in Section 4, older people and C2DE groups are significantly less likely to use the internet for news than younger people and ABC1 groups, and many people still rely on traditional providers for news. Even among people who use the internet for news, evidence suggests that traditional providers tend to be more popular than new online only news organisations, as discussed above, and we note in Section 7 that people may not trust social media sites as much as they trust traditional providers. Consequently, we do not consider that the growth of online news is likely to have a significant impact on consumption of traditional news providers for some time.
- 6.57 We expect news provision and consumption to continue changing in future, which may affect plurality. However, the exact nature of those changes is uncertain. The rise in use of (often free) online news could affect consumption patterns and result in challenges and opportunities for plurality.
- 6.58 For example, funding pressures on news providers, particularly newspapers, could lead some news providers to cut back on original news gathering or even close to save costs, and could consequently increase the reach and share of reference of well-funded news providers. Pricing strategies, such as decisions to introduce or remove paywalls, could affect news providers' reach and share of consumption. In addition, changes in consumer behaviour, technology or demographics, for example,

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<sup>193</sup> This wholesale analysis focuses on the main news providers, and groups a range of much smaller providers, as well as intermediaries, into a single 'other' category. Our analysis indicates that the relative popularity of different news providers does not vary greatly based on the number of wholesale sources people use. The five news providers with the widest cross-platform reach overall (BBC, ITN, Sky, News Corp, DMGT) are the same regardless of the number of sources people use.

could emphasise existing trends or radically alter them. Past examples include the mass adoption of smartphones and take-up of multichannel television platforms.

- 6.59 Some respondents to our invitation to comment noted that changes like the above could affect the reach and share of consumption of Fox/Sky and News Corp following the transaction. For example, the LSE Media Policy Project said that the transaction would *“enhance Fox and News Corp’s ability to combine with Sky to offer discounted subscriptions and maximise revenues through direct payment, thereby disadvantaging independent competitors and ultimately reducing available news plurality”*. [X] said that Fox/Sky and News Corp *“would have the ability and incentive to engage in strategic behaviour that could have the effect of prioritising the economic well-being of News Corp publication, to the detriment of independent news brands”*.
- 6.60 The factors outlined above have the potential to alter the dynamics of the provision of news significantly. In particular, the General Election 2017 may have highlighted different patterns of news consumption across different age groups. As we discuss in Section 8, this may have implications for the influence of traditional news providers. However, it is in our view too early to make a definitive judgement.
- 6.61 Indeed, looking over the near to medium term, it is not clear that the data presented in this report would change to any meaningful extent. In particular, online consumption of news does not appear to have resulted in traditional news outlets being replaced by new entrants with online only models. We do not consider that it can be said with any certainty that the rise of online and development of new commercial models will undermine traditional models in the near to medium term.

## Section 7

# Impact

## Summary

- 7.1 While measuring the relative impact of different news sources on individuals is challenging, the evidence suggests that Sky News is held in similar regard to the public service broadcasters in terms of importance, trustworthiness and impartiality. We may therefore be more concerned about a transaction involving Sky News than we would be were a less trusted news provider involved.
- 7.2 The Times and The Sunday Times are considered important sources of news by 48% of their readers, and are considered trustworthy by 57%. In contrast, The Sun and The Sun on Sunday are rated much lower, with around a third of their readers considering them important and trustworthy. As we note below, our assessment of wider, contextual factors suggests that the influence of newspaper titles may extend beyond their direct consumption.
- 7.3 It is not clear that the growth in online news has significantly weakened the impact that traditional news providers have on their users. Indeed, our metrics suggest that traditional providers retain a degree of authority online and may be more likely to shape their consumers' opinions than intermediaries, as consumers put greater trust in traditional media.

## Understanding impact is fundamental to an assessment of media plurality

- 7.4 Using a range of sources may dilute and provide context to the voice of any individual source. It also reduces the potential for any one media owner to exercise too much influence over public opinion and the political process. However, even in an environment where a range of news sources is consumed, some news providers have more impact on audiences than others. Considering the impact of different news sources is therefore an important part of assessing plurality.

## Measuring impact is complex

- 7.5 Measuring the impact that different sources of news have on their audiences is complex because people may not always be aware of whether and how a source affects them. We have proxy measures that can provide a more nuanced understanding of the relative impact of different news sources on different audiences.<sup>194</sup> They measure how important, accurate and reliable, trustworthy, impartial and unbiased the users of different news sources consider those news sources to be. They also measure whether users consider news sources to be high quality, to offer a range of opinions, or to help them make up their minds about news.
- 7.6 Some respondents to our invitation to comment criticised the metrics we use to measure impact. Professor Steven Barnett said that the proxies overstate the impact of television news because broadcasting regulation has "*helped to construct a strong*

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<sup>194</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality*. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/84174/measurement\\_framework\\_for\\_media\\_plurality\\_statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf)

*attachment to broadcasting as a highly trusted medium*". A submission from Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer said that an 'acceptability bias' may lead to our metrics understating the use of certain sources because "the degree to which consumers will be prepared to report, in a face-to-face survey, their attitudes to different news sources is likely to be conditioned by their perception of how socially acceptable it is to have those attitudes".

- 7.7 We note that our metrics cannot fully capture the impact of different news sources. Asking respondents directly about impact only measures conscious perceptions, rather than more subtle or unconscious influences. However, a news provider considered important and trustworthy by its users is likely to be able to influence the opinions of its immediate audience more than other news providers. We developed our measurement framework in 2015, redefining the set of metrics for impact to ask respondents whether any individual news source *'helps me make up my mind'*. We have used these metrics to consider the comparative impact of the news providers involved in the transaction.
- 7.8 In addition, we recognise that a news provider may have the ability to influence public opinion and the political process beyond the impact on its immediate audience. We consider this wider influence in Section 8.

### **Some news sources may have greater impact than others**

- 7.9 Consumption and impact are linked. If a news provider has a high share of consumption, it will have the opportunity to have impact on a greater proportion of people. News providers may have impact on the people who use them for news if they are trusted by their readers, viewers or listeners and can influence their opinions. A news source may also make an impact if the reader, viewer or listener regards the news provider as a voice of authority, because it operates under an established brand, or because it is perceived as impartial and unbiased. Below we set out how a news provider may attempt to use or increase its impact.

#### **A news provider may take a partisan position on an issue and attempt to persuade its audience of its view**

- 7.10 A news provider may be able to use its editorial control over content to have greater impact on its audience. For example, a news provider might take a position on certain issues, like supporting a particular political party or policy, and may present the news in a partisan way to try to persuade its audience of its view. Some newspapers run campaigns for certain issues.
- 7.11 Some believe partisan voices could have more impact on audiences than impartial voices. The LSE Media Policy Project said: "*While impassioned, one-sided argument is an integral element of a free press, it is also intuitively more likely to shape opinions than the carefully balanced and detached approach of broadcasters*".
- 7.12 Although news providers may try to influence their audiences, their ability to change audience views may be constrained because their role in practice may be to reinforce the existing beliefs of their audiences. For example, a person may choose to read a particular newspaper if he or she already agrees with its political stance.<sup>195</sup> However, in this case the provider can still have impact on their audience's views by reinforcing existing beliefs or by helping them shape their views about new or emerging issues.

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<sup>195</sup> Clifford, V., (May 2017). *Feisty news brands on the side of democracy*. Campaign. <http://www.campaignlive.co.uk/article/feisty-news-brands-side-democracy/1432733>

## **A news provider can choose which issues to omit or give prominence to**

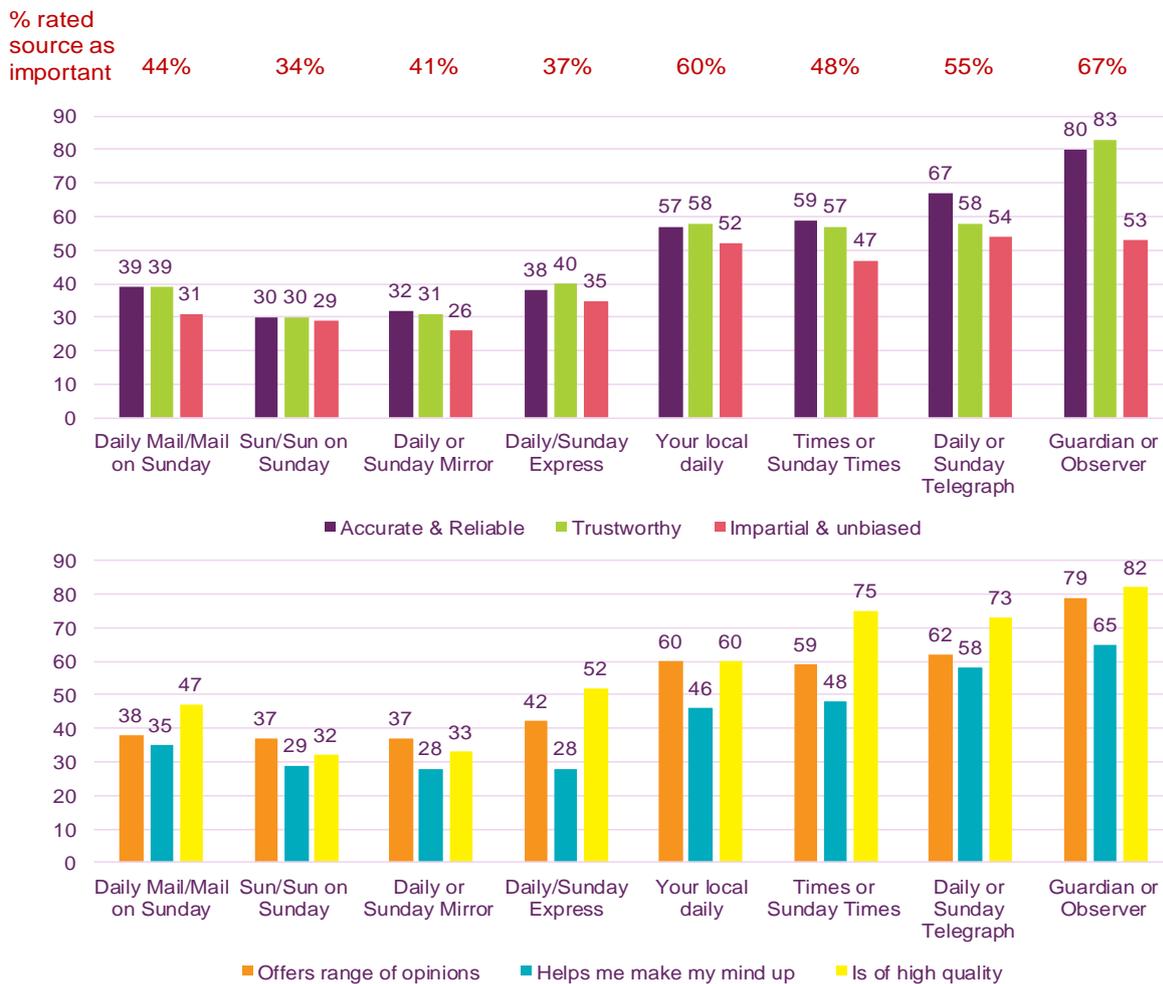
- 7.13 News providers can have impact in a subtler way by giving some stories more prominence than others or by omitting some stories from coverage altogether. A newspaper may choose to feature prominently a story on its front page or homepage, or a broadcaster may choose to feature an in-depth analysis or debate in favour of one story over another.

## **News Corp's broadsheet and tabloid titles are perceived differently by their respective readers**

- 7.14 The Times and The Sunday Times are rated highly across our proxy measures for impact by a significant proportion of their readers (Figure 7.1). They are rated in line with the other broadsheets for being 'impartial and unbiased', and in line with The Telegraph (but lower than The Guardian) for 'accurate and reliable', 'trustworthy', and 'helps me make up my mind'. The Sun is rated lower, with under a third of its readers rating it highly for 'accurate and reliable', 'trustworthy', 'impartial and unbiased' or 'helps me make up my mind'. The Sun's scores are broadly in line with The Daily Mirror/Sunday Mirror, The Daily Mail/Mail on Sunday and The Daily Express/Sunday Express. These metrics suggest that the impact of The Sun on its immediate audience may be lower than that of The Times.
- 7.15 We note that our metrics only go some way to understanding impact, not least because people may not be aware of the impact that a particular news source has upon them. We recognise the News Corp titles may have the potential to influence all of their respective readers to varying degrees, in ways not picked up by our metrics. In Section 8, we consider the influence news providers can have beyond their immediate audience.

**Figure 7.1 Attributes for printed newspaper sources among those who use each source weekly or more often**

Proportion of users who rated the news source highly<sup>196</sup> on the following attributes (%)



Source: Ofcom News Consumption Survey 2016, Q9c) And to what extent do you think the following statements apply to [name of source] as a news source?

Base: Those who use source to access the news weekly or more often (varies)

## Sky News is an important and trusted source of news

7.16 A news provider may have a greater impact on its audience if it is trusted. We note that Sky News is considered important, accurate and reliable and trustworthy by at least half of those who use it for news (Figure 7.2), broadly in line with the public service broadcasters.<sup>197</sup> We also note that the Sky News website / app scores highly across our impact metrics (Figure 7.3). We may therefore be more concerned about any transaction involving Sky News than we may be about a transaction concerning a smaller scale news provider with lower levels of trust among its audience.

<sup>196</sup> Scoring 7 out of 10 or higher.

<sup>197</sup> Ofcom News Consumption Survey 2016.

**Figure 7.2 Attributes for television news sources among those who use each source weekly or more often**

Proportion of users who rated the news source highly on the following attributes (%)



Source: Ofcom News Consumption Survey 2016, Q9c) And to what extent do you think the following statements apply to [SOURCE] as a news source?

Base: Those who use source to access the news weekly or more often (varies)

## It is not clear that the impact of traditional news providers has been significantly weakened by the growth in use of online news

### Fox has argued that the impact of traditional news providers has been weakened by the growth in use of online news

7.17 In its initial submission, Fox said that the growing use of online news has diluted the impact traditional providers of news can have on their audiences. Fox outlined three main ways in which online new sources had reduced the level of impact traditional news providers have:

7.17.1 **Tracking audience behaviour:** The submission said that audiences are increasingly influencing which stories news providers cover and how they cover them. It highlighted the way news providers take a range of metrics into account when making editorial decisions, for example, the numbers of clicks on – or shares of – an article, with well-read articles given

prominence on the homepage. Fox said that this is “*diluting the power of editors (and of a hypothetical interventionist owner)*”.<sup>198</sup>

- 7.17.2 **Use of intermediaries:** The submission said that increased use of intermediaries has reduced the impact news providers may previously have been able to exercise by giving prominence to certain stories over others because consumers are more likely to access stories directly rather than going through the news provider’s homepage.<sup>199</sup>
- 7.17.3 **Disintermediation:** The submission also referred to ‘disintermediation’, or the way that social media has given people direct access to politicians, journalists and others, reducing the ability of media owners to act as gatekeepers or to set the news agenda.<sup>200</sup>

### **Evidence suggests that traditional providers retain much of their impact on audiences despite the growth in online news**

- 7.18 Use of online news has grown rapidly and is likely to continue to do so.<sup>201</sup> While this presents some challenges for the provision of news as set out in Section 4, we recognise that use of online sources may develop to the extent that we may be less concerned in the future about the potential influence of individual media owners.
- 7.19 An increasing commercial incentive to track audience behaviour could outweigh the incentive a media owner may have to prioritise certain content. Similarly, intermediaries do not have editors who select content to display, but rather rely on algorithms, as noted in Section 4. Intermediaries and disintermediation again may lead to more diversity in the sources people use, potentially decreasing the impact of traditional providers. Social media in particular could affect the impact traditional providers have by offering a diverse range of viewpoints to balance out and provide context to the voices of traditional providers. For example, 61% of people who look at news articles or videos on Twitter say they look at posts shared by a public figures or journalist, and 23% say they do so on Facebook.<sup>202</sup>
- 7.20 However, use of online news is still evolving and evidence indicates that, despite the proliferation of news sources, traditional providers retain strong influence in the online world. As discussed in Section 4, people often look to traditional providers to help them navigate the range of news content now available online, as well as to help them contextualise and validate stories provided by other sources.<sup>203</sup>
- 7.21 Respondents to our News Consumption Survey recognise that intermediaries, in particular social media sites, give them access to a range of voices, with 55% of Facebook users and 59% of Twitter users rating the sites highly for ‘offers a range of opinions’. However, our metrics suggest that traditional providers retain a degree of authority online and may be more likely to shape their audiences’ opinions than intermediaries, because more users put their trust in traditional media. As illustrated

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<sup>198</sup> Annex 1 to Fox (March 2017). *Initial submission to Ofcom*.

<sup>199</sup> *ibid*, p.41.

<sup>200</sup> *ibid*, p.44.

<sup>201</sup> See Section 4.

<sup>202</sup> Ofcom News Consumption Survey 2016.

<sup>203</sup> Robin Foster, (July 2012). ‘News Plurality in a Digital World’ in Reuters Institute, *Digital News Report 2016*.

in Figure 7.3. Facebook and Twitter are rated important sources of news by a minority of those who use them for news.<sup>204</sup>

**Figure 7.3 Attributes of internet sources among those who use each source weekly or more often**

Proportion of users who rated the news source highly on the following attributes (%)



Source: Ofcom News Consumption Survey 2016, Q9c) And to what extent do you think the following statements apply to [SOURCE] as a news source?

Base: Those who use source to access the news weekly or more often (varies)

7.23 We believe that traditional providers, including the News Corp titles and Sky News, retain much of their impact online, given they retain control over:

7.23.1 the news they produce and the tone of the piece.

<sup>204</sup> Base sizes for the online presences for The Sun (N=18), the Times/Sunday Times (N=21) and the Telegraph/Sunday Telegraph (N=37) were too small to provide accurate data for the attributes of these internet sources. However, as discussed in Section 6, we have seen evidence to suggest online consumption of The Sun in particular is significantly higher than reflected by our News Consumption Survey 2016.

- 7.23.2 the position of stories on the homepage of their websites or their apps, which are still the most popular ways for people who use the internet for news to access news content.<sup>205</sup> News providers may choose to take audience metrics into account but this is only one consideration. For example, Oliver and Ohlbaum noted that at The Times “*the Editor’s decision on the length, placement and content of a story is key*”.<sup>206</sup>
- 7.23.3 what they post on social media and how they use it to drive traffic to their own websites. For example, in Section 6 we note that evidence suggests that the websites of The Sun and Sky News generate substantial traffic from social media and achieve high levels of readership.<sup>207</sup>
- 7.23.4 whether and how they promote certain content on their own websites and apps, for example by way of prominent links alongside an article to other stories. The digital editor of The Sun describes the aim of the digital team in part to “*optimise the website to show off the best of the paper’s content to a huge internet audience and a new generation*”.<sup>208</sup> Respondents to our invitation to comment raised concerns that the proposed transaction would lead to additional cross-promotional activity for Fox, Sky and News Corp, potentially amplifying their voice.
- 7.23.5 how they ensure their content appears prominently in search engine results. Many news providers now employ staff whose role is to ensure headlines appear prominently on search engines.<sup>209</sup> For example, The Sun recently advertised a job for an ‘SEO [search engine optimisation] Editor’, whose responsibilities would include recommending relevant keywords to journalists to drive traffic.<sup>210</sup>
- 7.24 Finally, 80% of people do not use social media for news and 52% of people do not use the internet for news at all.<sup>211</sup> As noted in Section 4, these people are more likely to be older or part of the DE socioeconomic group. For them, traditional providers are likely to retain much of their impact.

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<sup>205</sup> Among those who use the internet for news, 46% mostly or often go directly to the website or app of a news provider, compared to 40% for social media and 28% for search engines. Ofcom. News Consumption Survey 2016.

<sup>206</sup> Oliver and Ohlbaum, (July 2014). *Measuring Online News Consumption and Supply*. p30. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/23775/measuring-online-news.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/23775/measuring-online-news.pdf)

<sup>207</sup> See Section 6.

<sup>208</sup> <https://www.news.co.uk/who-we-are/toptalent/keith-poole/>

<sup>209</sup> Oliver and Ohlbaum, (July 2014). *Measuring Online News Consumption and Supply*, p30. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/23775/measuring-online-news.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/23775/measuring-online-news.pdf)

<sup>210</sup> <https://www.reed.co.uk/jobs/seo-editor-the-sun/32025542>

<sup>211</sup> Ofcom News Consumption Survey 2016.

## Section 8

# Influence over the news agenda and the political process

## Summary

- 8.1 The transaction may increase the ability of members of the Murdoch Family Trust to influence the overall news agenda. There is a risk that members of the Murdoch Family Trust may seek to coordinate the editorial policy of news outlets under their influence by omitting certain news stories, highlighting others or using the same commentators in their newspapers and on television news. This type of coordination could weaken the editorial independence of Sky News and so give members of the Murdoch Family Trust greater influence over public opinion.
- 8.2 The transaction may increase the influence that members of the Murdoch Family Trust have over the political process. Respondents to our invitation to comment argued that members of the Murdoch Family Trust already hold significant political influence, citing evidence that includes the Leveson Inquiry. The transaction could increase the perception among some politicians that members of the Murdoch Family Trust are more able to shape the editorial direction of Sky News, in order to favour one side of a political debate over another. Our assessment, therefore, is that there is a risk that the transaction may increase the political influence of members of the Murdoch Family Trust.

## We have assessed the influence news providers can have beyond their own immediate audience

- 8.3 In our advice to the Secretary of State in 2012<sup>212</sup>, we defined plurality with reference to the desired outcomes of a plural market as:
- 8.3.1 ensuring there is a diversity of viewpoints available and consumed across and within media enterprises; and
  - 8.3.2 preventing any one media owner or voice having too much influence over public opinion and the political agenda.
- 8.4 The assessment of quantitative data on availability, consumption and impact goes some way to informing the first element but it does not of itself provide an indication of the extent to which any one media owner may have too much influence over public opinion or the political process. This influence could extend beyond the news providers' immediate audience.
- 8.5 Respondents to our invitation to comment raised concerns about the ability of the Fox/Sky and News Corp to set the wider news agenda<sup>213</sup> and the effect of the

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<sup>212</sup> Ofcom, (June 2012). *Measuring media plurality: Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport*.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/57694/measuring-media-plurality.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57694/measuring-media-plurality.pdf)

<sup>213</sup> Avaaz / Media Matters for America; Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; Professor Steven Barnett; [X]; and Media Reform Coalition.

transaction on the influence of members of the Murdoch Family Trust over the political process.<sup>214</sup> We consider these issues in this section.

## **By setting the wider news agenda, a news provider could increase its influence over public opinion and the political process**

- 8.6 Agenda setting refers to the ability of the media to influence which issues are considered important by the public and which are not, and the ability of news providers to influence issues the wider media focuses on. For example, a news provider could set the wider news agenda by breaking a story with a high degree of public interest that is subsequently covered more widely, as The Telegraph did in 2009 with its story about MPs' expenses.
- 8.7 Agenda setting can take place over the short term, for example during an election campaign or referendum, or over the long term, by socialising certain issues over many years. Agenda setting has implications for public opinion: some have suggested that the more attention the media pays to a particular issue, the more likely the public is to recall the issue.<sup>215, 216</sup>
- 8.8 A news provider that can influence the news agenda can influence which stories are pursued by other news providers and which are not, even if it is not able to influence the way other news providers report those stories. Agenda setting may allow a news provider to influence which issues are the focus of public debate, and even which issues get put on the political agenda, as politicians attempt to address the public's concerns. The ability of different news organisations to set the wider news agenda is therefore an important factor in considering the plurality consideration.

## **Traditional providers retain much of their ability to set the news agenda, despite the growth in the use of online news**

- 8.9 Agenda setting can take place across different platforms as well as between different sources within those platforms. For example, several newspapers<sup>217</sup> reported on a story broken by the BBC's Panorama in its 2011 investigation into care failures in private nursing homes. Broadcasters have reported on stories originally broken by newspapers, including The Guardian's 2013 coverage of the National Security Agency files provided by whistle-blower Edward Snowden and The Times' interview with Andrea Leadsom, a Conservative MP, during the 2015 Conservative leadership campaign.
- 8.10 Online only news organisations and intermediaries can also influence the news agenda. For example, BuzzFeed has a team of investigative journalists and has broken stories that went on to be covered more widely, for example investigating with

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<sup>214</sup> [X]; Avaaz / Media Matters for America; 38 Degrees (as part of its template for public submissions); Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer; Robin Gill; [X]; [X]; and many individual members of the public.

<sup>215</sup> Rudd, C. (February 2016). *Effects of the Media on Citizens and Politicians*. Published in *Politics and the Media*, ed. Geoff Kemp, Babak Bahador, Kate McMillan and Chris Rudd.

<sup>216</sup> One study has suggested that media emphasis on particular issues within the general theme of immigration has led to immigration becoming of greater concern to the general public. However, evidence is limited. McLaren, L., Boomgaarden, H. & Vliegenthart R. (January 2017). *News Coverage and Public Concern about Immigration in Britain*. <https://academic.oup.com/ijpor/article-abstract/doi/10.1093/ijpor/edw033/2866468/News-Coverage-and-Public-Concern-About-Immigration?redirectedFrom=fulltext>

<sup>217</sup> Including The Guardian, The Daily Mail and The Independent.

the BBC claims of match fixing in tennis. Online only providers and social media can also play an important role in challenging the agenda put forward by traditional media by focusing on stories not covered elsewhere or by offering a fresh perspective on stories.

- 8.11 Despite increasing growth and diversity in available news sources, traditional news providers retain much of their ability to shape the news agenda. A 2015 review of research into media agenda setting suggested that *“though the traditional media lost some of their agenda-setting potential, their impact is maintained in the new media environment and even has incorporated some of the flow into online platforms”*. The review said that new media platforms, like blogs, *“may compete with the mass media’s agendas, but very often they cite, share, promote and diffuse these agendas”*.<sup>218</sup>
- 8.12 A study by King’s College London<sup>219</sup> suggested that the news agendas of ‘political influencers<sup>220</sup>’ on Twitter closely mapped that of the mainstream media during the General Election 2015. The study suggested that: *“political influencers may have been responding to the mainstream news agenda rather than leading it”*, though the responses of political influencers were frequently critical of the news agenda set by the mainstream media, often seeking to subvert it rather than reiterate or support it.
- 8.13 We note that some commentators have suggested that social media played an influential role in the outcome of the General Election 2017. However, we believe it is too early to determine the relative influence of social media and traditional media.

### **The press is thought to have a particularly influential role in agenda setting**

- 8.14 The press is perceived by some to play a particularly influential role in setting the wider news agenda. Lord Justice Leveson recognised the widely-held view that the press can *“set the news agenda, shape culture and change perceptions”*.<sup>221</sup> That ability to set the news agenda, shape culture and change perception may not become apparent when considering reach and share of reference alone.
- 8.15 The stories covered by newspapers are generally considered important to understanding the wider political landscape. Many broadcast programmes focusing on news and current affairs feature a segment setting out what stories the paper are covering that day. The Andrew Marr Show, which has on average 1.6 million viewers<sup>222</sup>, includes a review of the Sunday newspapers. Sky News reviews the next day’s national newspapers in its evening Press Preview programme. The Today programme, which broadcasts on Radio 4 every morning except Sundays, and has

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<sup>218</sup> Weimann, G. and Brosius, H. “A New Agenda for Agenda-Setting Research in the Digital Era” in *Political Communication in the Online World: Theoretical Approaches and Research Designs*. Ed. Vowe, G. & Henn, P., (December 2015).

<sup>219</sup> Moore M., Ramsay G. (October 2015). *UK Election 2015 - Setting the agenda*, Centre for the Study of Media, Communication and Power with support from the Media Standards Trust, the Policy Institute at King’s and Ebay Inc. <http://www.kcl.ac.uk/sspp/policy-institute/CMCP/MST-Election-2015-FINAL.pdf>

<sup>220</sup> The research identified 309 political influencers on Twitter based on criteria including: number of followers, number of accounts followed, Klout score, and frequency and content of tweets.

<sup>221</sup> The Leveson Inquiry into the culture, practices and ethics of the press, (November 2012), p.78. <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp>

<sup>222</sup> BARB. See Annex 3 for more detail.

on average 7.5 million listeners each week, features a short segment covering the day's newspapers.<sup>223</sup>

- 8.16 Newspapers may retain their influential role in agenda setting despite increased availability of news sources online. A study by Cardiff University<sup>224</sup> found that the morning newspapers continued to share a similar agenda to the evening television news bulletins during the General Election 2015, despite changes to the pace and fluidity of the news cycle stemming from increased use of online news. The LSE Media Policy Project said that “*Sky News, the BBC and ITV all tweet the front pages of next day’s national newspapers every evening, and their programmes rarely if at all feature online-only publications such as BuzzFeed, Huffington Post and Vice News*”.
- 8.17 In their response to our invitation to comment, Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer said well-resourced news providers are more likely to play a role in agenda setting because they engage in more original news production. They said the more resources a news provider has, “*the more stories it will create that other outlets might pick up; if it lacks those resources, it is dependent on other outlets for stories to run*”.
- 8.18 In addition, some respondents<sup>225</sup> argued that online intermediaries increase the ability of existing brands to exert influence on the news agenda. For example, the Media Reform Coalition argued that “*intermediary platforms can enable dominant brands to exert agenda influence beyond their own publications or outlets*”.

## **The transaction may increase the ability of members of the Murdoch Family Trust to influence the overall news agenda**

### **News Corp titles may already play a role in setting the wider news agenda**

- 8.19 The Cardiff University study<sup>226</sup> looked at the relationship between newspaper agenda setting and television news during the General Election 2015. The researchers said that their findings “*reinforce many previous intermedia agenda-setting studies that demonstrated newspapers, in particular quality or broadsheet titles, act as opinion leaders*” and identified “*clear moments during the [General Election 2015] campaign where television news coverage followed stories originating in the press*”. The study found “*almost a third of TV news items appeared in newspapers prior to being broadcast by TV news*” and that “*61.1 per cent of airtime was dedicated to covering stories previously published by newspapers*”.
- 8.20 The study also found that among the stories reported by newspapers before their broadcast in national news bulletins, around 23% originated from News Corp titles. This figure is a greater proportion than that of any other newspaper group and suggests News Corp titles played some role in setting the news agenda during the General Election 2015. Given the Murdoch Family Trust’s influence over the News

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<sup>223</sup> RAJAR. See Annex 3 for more detail.

<sup>224</sup> Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK General Election campaign*, April 2016. <http://orca.cf.ac.uk/88825/7/Cushion%20et%20al%202016.pdf>

<sup>225</sup> Media Reform Coalition; and Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer.

<sup>226</sup> Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, (April 2016). R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK General Election campaign*. <http://orca.cf.ac.uk/88825/7/Cushion%20et%20al%202016.pdf>

Corp titles<sup>227</sup>, the Murdoch Family Trust may already have some ability to use its newspaper titles to influence the wider news agenda.

8.21 We recognise there may be some differences between different News Corp titles. While 16.3% of stories originated from The Times, only 6.7% originated from The Sun, which was the smallest proportion among all the newspapers. This difference may have occurred because The Times, along with The Telegraph, broke stories during the campaign that were picked up by other news providers.<sup>228</sup>

**Figure 8.1 Origin of election related broadcast stories which had previously been covered by newspapers**

Newspaper	Percentage of times broadcast story covered (%)
The Daily Telegraph/ The Sunday Telegraph	20.2
The Times / The Sunday Times	16.3
The Independent/ The Independent on Sunday	15.4
Daily Mail / The Mail on Sunday	12.5
The Guardian / Observer	12.5
Daily Mirror / Sunday Mirror	9.6
Daily Express/ Sunday Express	6.7
The Sun / The Sun on Sunday	6.7
Total	100 (N=104)

Source: Cushion, S., Kilby, A., Thomas, R., Morani, M. & Sambrook, R. *Newspapers, Impartiality and Television News: Intermedia agenda-setting during the 2015 UK General Election campaign, April 2016*

8.22 The study does not provide conclusive evidence about the ability of News Corp newspapers to set the news agenda. But it does suggest that News Corp's influence over public opinion may go beyond that measurable by consumption metrics alone owing to its ability to influence the choice of stories by other news providers. We recognise that it is too early to say whether a similar analysis of the General Election 2017 might replicate these results.

8.23 The Cardiff study also found that Sky News was most likely to report a public policy story, such as a new housing announcement or healthcare proposal, previously picked up by the press, with 63.3% of Sky News's policy items having first featured in at least one newspaper. This finding could suggest that Sky News is more likely to follow a news agenda set by the press than other broadcasters. However, the study did not look into Sky News' ability to set the agenda of the press or of other broadcasters.

8.24 We note that the parameters of this study were limited. It explored agenda setting between newspapers and television broadcasters during the General Election 2015 only, which might not be indicative of news coverage more generally. The study did

<sup>227</sup> See Section 3.

<sup>228</sup> For example, the study refers to The Times interview with Michael Fallon MP, then Secretary of State for Defence, discussing the then Labour leader Ed Miliband MP and his defence policy, which was subsequently picked up by other outlets.

not include all the election coverage in newspapers nor all broadcast news bulletins. The study focused on television and newspapers only, and did not look at social media and online. The researchers acknowledged the inherent complexities, saying: “*our content analysis study cannot assume causality between press influence and television news coverage*”.

- 8.25 Professor Steven Barnett suggested that we assess the prominence of News Corp publications in broadcast reviews of the newspapers, among other measures to assess agenda setting. While this type of content analysis may offer some limited additional insight, it would not in itself be a definitive measure of agenda setting, and would require detailed scoping, which has not been feasible in a first stage assessment.

### **The transaction may amplify the already potentially significant ability of the News Corp titles to set the news agenda**

- 8.26 The evidence is indicative of a risk that Fox/Sky and News Corp may increase its influence over public opinion as a result of the transaction. Fox/Sky and News Corp would be the only operator with a significant presence across all four platforms for news. The transaction would:
- 8.26.1 bring together the largest UK-wide newspaper group (News Corp) and one of only three significant providers of television news (Sky);
  - 8.26.2 increase the reach of the providers under the influence of the Murdoch Family Trust in the provision of radio news; and
  - 8.26.3 expand the reach and number of important sources of online news under the influence of the Murdoch Family Trust.
- 8.27 The strength of this position may therefore allow Fox/Sky and News Corp to exercise a greater degree of influence over public opinion than might otherwise be the case absent the transaction. Without measures to ensure the independence of the news operations of Sky (Sky News and IRN), the Murdoch Family Trust may, in pursuit of its commercial or political goals, seek to coordinate the editorial policy of news outlets under its influence to fulfil those aims.
- 8.28 The strength of voice of Fox/Sky and News Corp in this respect may be more significant than is apparent from the quantitative data, owing to the ability to follow a similar editorial agenda across television, radio, print and online. Following the transaction, for example, members of the Murdoch Family Trust may encourage Sky News to follow a similar agenda to that of the News Corp titles. Sky News could also be used to extend further the voice of the News Corp titles by more regularly featuring journalists from the News Corp titles on its news and current affairs programmes.

### **The transaction may increase the influence that members of the Murdoch Family Trust have over the political process**

- 8.29 A large number of respondents<sup>229</sup> to our invitation to comment said that members of the Murdoch Family Trust and, in particular, Rupert Murdoch, have an existing degree of influence over the political process because of the news outlets they own. The submission from the LSE Media Policy Project said that “*there is long-standing*

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<sup>229</sup> [redacted]; Avaaz; and a large number of individual respondents.

*historical evidence of how power has been exercised through both editorial and political influence”* by News Corporation and Rupert Murdoch. 38 Degrees provided a survey it had commissioned which said that 60% of respondents believed that Rupert Murdoch has too much power and influence over British politics.

8.30 The Media Reform Coalition sent us data on the most frequent visitors to 10 and 11 Downing Street between October 2015 and September 2016. The data suggested that representatives from News Corp were the most frequent visitors. However, while it is clear that News Corp and members of the Murdoch Family Trust have access to senior decision makers and politicians<sup>230</sup>, we recognise that the number of meetings with senior politicians is not itself evidence that members of the Murdoch Family Trust are able to influence either the behaviour of key decision makers, or the wider political process.

8.31 As part of his 2011-12 public judicial inquiry into the culture, practices and ethics of the press, Lord Justice Leveson stated that:

8.31.1 *“All the politicians who gave evidence before the Inquiry said that Mr Murdoch exercised immense power and that this was almost palpable in their relations with him. This is not to say that Mr Murdoch set out to wield power or that his personal manner was other than amicable and respectful in his dealings with politicians. But it is to say that he must have been aware of how he was being perceived by his interlocutors; to suggest otherwise would be to suggest that Mr Murdoch knows little about human nature and lacks basic insight, which could not, of course, be further from the truth”*.<sup>231</sup>

8.32 Lord Justice Leveson went on to say:

8.32.1 *“In their discussions with him, whether directly or by proxy, politicians knew that the prize was personal and political support in his mass circulation newspapers. The value or effect of such support may have been exaggerated, but it has been treated as having real political value nonetheless”*.<sup>232</sup>

8.33 It is not our role to comment on the extent to which the influence that members of the Murdoch Family Trust may already have over the political process is a cause for concern. Rather, we have considered whether that influence over the political process may be expected to increase as a result of the transaction and to operate against the public interest.

8.34 The degree of influence of members of the Murdoch Family Trust over the political process is difficult to evidence. As Lord Leveson found:

*“It is the ‘without having to ask’ which is especially important here. Sometimes the very greatest power is exercised without having to ask, because to ask would be to state the blindingly obvious and thereby diminish the very power which is being displayed. Just as Mr*

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<sup>230</sup> The Leveson Inquiry into the culture, practices and ethics of the press, Part I: The Press and Politicians, (November 2012).

<http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp>

<sup>231</sup> *ibid*, p.1431.

<sup>232</sup> *ibid*, p.1432.

*Murdoch's editors knew the basic ground-rules, so did politicians.  
The language of trades and deals is far too crude in this context.*<sup>233</sup>.

- 8.35 In such circumstances, documentary evidence of such influence is likely to be difficult to come by. Nevertheless, Lord Leveson clearly sets out his view that Rupert Murdoch does have some level of influence over the political process.
- 8.36 The available evidence therefore indicates that Rupert Murdoch, and potentially other members of the Murdoch Family Trust, already have a degree of influence over the political process. The effect of the transaction would be to add Sky News to the portfolio of news providers over which the Murdoch Family Trust has material influence. The addition of Sky News to that portfolio may therefore have the effect of amplifying the influence of members of the Murdoch Family Trust over the political process.
- 8.37 First, the addition of another important news provider may raise questions in the mind of politicians as to whether the level of "*personal and political support*" which may be offered by members of the Murdoch Family Trust is increased.
- 8.38 Second, the ability to choose the relative importance given to stories on Sky News may be capable of further influencing the political process through the implied threat of negative or no coverage and the prize of positive coverage for politicians.
- 8.39 We recognise that the requirement for due impartiality within the Broadcasting Code could go some way to address this concern in restricting the ability of the Murdoch Family Trust to pursue its own objectives through Sky News. However, as set out in Section 9, the provisions of the Broadcasting Code cannot address editorial decision making in terms of which stories may be prioritised. The Broadcasting Code does not seek to influence such editorial decisions and to do so would raise serious concerns around freedom of speech. In any event, such influence may take subtle forms which would not be picked up by the Broadcasting Code, for example through the selection or omission of particular news items.
- 8.40 We are concerned that, due to the significant presence that Fox/Sky and News Corp would have across all four platforms for news, the members of the Murdoch Family Trust may increase its influence over public opinion and the political process. We note, however, that the news market continues to develop since the Leveson Inquiry's findings were published, with decline in the circulation of the major national newspapers. That decline may have affected the relationship between the press and politicians but on the basis of current evidence this cannot be determined.

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<sup>233</sup> *ibid*, p.1432.

## Section 9

# Internal plurality

## Summary

- 9.1 Contextual factors are an integral part of the media plurality measurement framework, given the complexity of news provision and the differences between news organisations. In particular, internal plurality within news providers may go some way to mitigating concerns in relation to external plurality of media enterprises. Regulation and audience expectation may also act to mitigate the impact or influence of particular news providers.
- 9.2 We do not believe that the independence of Sky News, absent further arrangements, would be sufficiently protected from influence from the Murdoch Family Trust to offset the concerns we have identified relating to a potential reduction in external plurality. Neither do we consider that broadcast regulation or audience expectation is likely to mitigate the concerns identified to any meaningful degree.

## Contextual factors are integral to the way we measure plurality

- 9.3 Quantitative metrics on the availability, consumption and impact of news sources are an important part of assessing plurality. However, a purely mechanistic approach to plurality measurement risks failing to capture important differences between news organisations and news sources. As such, quantitative metrics alone are insufficient for a full assessment of plurality, given the complexity of news provision. Assessment of relevant contextual factors is therefore an integral, not supplementary, part of the framework which helps interpret the quantitative data.<sup>234</sup>
- 9.4 In the context of a public interest test, the relevant contextual factors will depend on the news organisations involved, and on the timing of the transaction. We have previously said that contextual factors may include, but are not limited to:
- 9.4.1 governance models;
  - 9.4.2 funding models;
  - 9.4.3 the potential power or editorial control exercised by owners or proprietors or senior executives within news organisations;
  - 9.4.4 internal plurality;
  - 9.4.5 market trends and potential future developments; and
  - 9.4.6 regulation and oversight, in some cases based on statutory obligations.<sup>235</sup>
- 9.5 Our Measurement Framework is clear that the above factors give an indication of the types of factors which may be useful to consider in an assessment of plurality and that it is not possible to create an exhaustive list. Therefore, the consideration of

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<sup>234</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport*, paragraphs 3.15-3.16.

<sup>235</sup> *ibid*, paragraph 3.17.

contextual factors should not be limited to these examples. We also explained that contextual factors should be used throughout the measurement framework to inform availability, consumption and impact metrics.<sup>236</sup>

## **We consider whether internal plurality could mitigate our concerns about external plurality**

9.6 Internal plurality refers to the range of voices and opinions within a news organisation or group of organisations under the common control of one owner. Where there is a single source of influence across an organisation (or organisations), internal plurality is limited. If a range of voices and opinions are present in an organisation, and strong protection for that range of voices is in place, we may be less concerned about a risk to external plurality.

### **Following the transaction, Sky News would be subject to influence from the Murdoch Family Trust**

9.7 As set out in Section 8 above the transaction may result in an increase in the ability of media enterprises under the influence of the Murdoch Family Trust to influence public opinion and the political agenda. We are concerned that following the transaction, members of the Murdoch Family Trust may be able to influence the output of Sky News to align its editorial stance with that of Fox News and the News Corp titles, through the selection and omission of stories or through the choice of commentators invited on to Sky News.

9.8 If, however, Sky News is protected as an independent voice within the Fox group and the Murdoch Family Trust is prevented from aligning the editorial stance of Sky News with that of News Corp and Fox titles, the concern may be alleviated. There are a number of ways in which internal plurality might be secured, and we have considered the extent to which any of these matters may be expected to provide any degree of comfort.

## **We not believe existing safeguards, absent further intervention, are sufficient to protect internal plurality**

### **The Broadcasting Code limits the extent to which broadcasters can be partisan, but cannot ensure against it**

9.9 The Broadcasting Code could provide safeguards against the ability of the Murdoch Family Trust to align the editorial stance of news providers under its influence. The Broadcasting Code requires broadcasters to present news with due impartiality and due accuracy.<sup>237</sup> The Broadcasting Code therefore may limit the extent to which broadcasters can be partisan in their news output, and would limit the extent to which Sky News could mimic the approach of News Corp titles and Fox News. Newspapers are not subject to any impartiality requirements and, as set out in relation to the broadcasting standards consideration, Fox News is subject to a different approach in the application of the impartiality rules. It is not a main source of news in the UK.

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<sup>236</sup> Ofcom, (November 2015). *Measurement Framework for Media Plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport*, paragraph 3.17.

<sup>237</sup> Ofcom. *The Broadcasting Code*. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

9.10 However, the requirement for ‘due impartiality’ is not absolute and broadcasters have a degree of editorial discretion in the style and the tone of a channel. The Competition Commission also recognised such limitations in the Sky/ITV case where it found:

9.10.1 “Impartiality relates to the fair and balanced treatment of differing viewpoints in relation to particular news stories. However, it does not address the relative prominence given to each story. In our view, it is a matter of public interest that decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives.”<sup>238</sup>

9.10.2 “We found that the regulatory framework, while relevant to the plurality of news and, hence the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news.”<sup>239</sup>

9.11 The Broadcasting Code allows us to consider complaints about impartiality or accuracy in relation to specific programmes. It does not provide for us to take a view on the overarching approach of a channel, for example, the specific news stories that it covers or its tone. A channel could become more partisan by sensationalising particular news stories. Alternatively, it could be done through its current affairs programming, where due impartiality is required only on political or industrial issues on which politicians, industry and/or the media are in debate, and on matters that relate to current public policy.<sup>240</sup>

9.12 In that light, we do not consider that the impartiality rules of the Broadcasting Code are sufficient of themselves to ensure that the editorial stance of Sky News does not become aligned with the other news outlets under the influence of the Murdoch Family Trust.

### **Audience expectations provide less of a constraint where changes are subtle**

9.13 Information submitted by Sky indicates that the majority of viewers consider impartiality important, suggesting that a lack of impartiality by Sky News might affect viewing figures.<sup>241</sup> It may therefore be more difficult to align the editorial stance of Sky News with that of other outlets (newspapers and Fox News) where impartiality is not expected.

9.14 However, audience expectations may provide less of a constraint where the influence on Sky News is subtle and not immediately obvious to viewers, for example, where stories are omitted. For the same reasons as our consideration of the Broadcasting Code, we do not consider that audience expectations of themselves are likely to ensure editorial independence of Sky News following the transaction.

### **Culture in newsrooms may change, and does not provide a safeguard**

9.15 Fox has argued that, as recognised by the Competition Commission: “*the strong culture of editorial independence in television news means that editors would resist*

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<sup>238</sup> Competition Commission, (December 2007). *British Sky Broadcasting Group plc / ITV plc merger inquiry*. Paragraph 5.12.

<sup>239</sup> *ibid.* Paragraph 5.38.

<sup>240</sup> Ofcom. *The Broadcasting Code*. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>241</sup> Sky’s response to our information request. Data relates to October 2016.

*any intervention from the board or shareholders” which “in turn reinforces the relevance of broadcasting regulation, since, as the Competition Commission noted, any breach of impartiality requirements caused by shareholder influence would likely be brought to the attention of Ofcom by editorial staff”.*<sup>242</sup>

- 9.16 However, our view is that culture does not provide an adequate safeguard against editorial interference. Culture in newsrooms may be affected by a range of factors, including the position and views of the proprietor and senior editorial staff, and may change over time and with personnel changes. We do not therefore consider that a difference in culture between the newsrooms of Sky and those of News Corp titles and Fox News can be relied upon to ensure the editorial independence of Sky News on an ongoing basis.

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<sup>242</sup> Fox (March 2017). *Initial submission to Ofcom.*

## Section 10

# The broadcasting standards public interest consideration

## Summary

- 10.1 The second public interest consideration that the Secretary of State has asked Ofcom to report to her on is whether there would be a genuine commitment to the attainment of broadcasting standards by Fox and Sky following the transaction.
- 10.2 In line with the Secretary of State's 'minded to' letter, we have considered:
  - 10.2.1 whether the compliance record of Fox in the UK indicates that Fox would be less effective than Sky at ensuring compliance with broadcasting standards;
  - 10.2.2 whether the compliance record of Fox in markets other than the UK broadcasting markets raises concerns about compliance with broadcasting standards in the UK; and
  - 10.2.3 the implications of failures of corporate governance within Fox group companies and News Corporation group companies for the broadcasting standards consideration.
- 10.3 The number of breaches recorded against Fox services is not exceptional when compared to Sky, or with other broadcasters that hold a broadly comparable number of Ofcom licences. None of Fox's or Sky's breaches of the Broadcasting Code warranted a sanction.
- 10.4 In terms of the nature of Fox's breaches, we have not in the last five years recorded any breaches of rules relating to due accuracy or due impartiality against news content broadcast on Fox News. We have, however, found non-news content<sup>243</sup> broadcast on Fox News in breach of Broadcasting Code rules on materially misleading content on one occasion and the rules on due impartiality and elections on three occasions. We do not consider that such breaches show a lack of genuine commitment to the attainment of the broadcasting standards objectives.
- 10.5 Fox's and Sky's compliance records overseas in our view do not present a cause for concern. Neither party has a significant number of breaches in relevant jurisdictions over the past five years.
- 10.6 During the course of our assessment, we found that Fox had not put in place procedures to ensure the compliance of Fox News' content with the Broadcasting Code. Fox has since put in place compliance arrangements and procedures that we consider are sufficient to meet the requirements of its licence. Fox has an ongoing obligation to comply with its licence conditions and with the Broadcasting Code and if any further compliance concerns were to arise following the proposed transaction, we would compel Fox to take steps to address such concerns through enforcement action.

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<sup>243</sup> Non-news content refers to current affairs content such as discussion items.

- 10.7 The Secretary of State also indicated that she considers it would be appropriate for Ofcom to consider and report on the implications, if any, of failings of corporate governance for the broadcasting standards consideration. We have considered alleged corporate governance failures in the context of our separate assessment of whether Sky would remain fit and proper to hold broadcast licences following the transaction. We have concluded that the behaviours alleged at Fox News amount to significant corporate failure, however, the overall evidence available to date does not provide a reasonable basis to conclude that if Sky were 100% owned and controlled by Fox, they would not be fit and proper to hold broadcast licences.
- 10.8 In light of Fox's and Sky's broadcast compliance records and taking account of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards.

### **The Communications Act 2003 sets out the broadcasting standards to which media enterprises must be genuinely committed**

- 10.9 The European intervention notice of 16 March 2017 requires Ofcom to report to the Secretary of State on the effect of the transaction on *“the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.”*
- 10.10 The standards objectives set out in section 319 of the Communications Act 2003 are:
- 10.10.1 that persons under the age of eighteen are protected;
  - 10.10.2 that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
  - 10.10.3 that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320<sup>244</sup> are complied with;
  - 10.10.4 that news included in television and radio services is reported with due accuracy;
  - 10.10.5 that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
  - 10.10.6 that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
  - 10.10.7 that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
  - 10.10.8 that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;

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<sup>244</sup> Section 320 of the Communications Act 2003.  
<http://www.legislation.gov.uk/ukpga/2003/21/section/320>

- 10.10.9 that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
  - 10.10.10 that the international obligations of the UK with respect to advertising included in television and radio services are complied with;
  - 10.10.11 that the unsuitable sponsorship of programmes included in television and radio services is prevented;
  - 10.10.12 that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
  - 10.10.13 that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- 10.11 Those standards are enshrined in a number of Codes, including the Ofcom Broadcasting Code<sup>245</sup>, with which any person holding a licence issued under the Broadcasting Acts 1990 and 1996 must comply.<sup>246</sup>

### **We have assessed Fox's and Sky's compliance in the UK, and considered this in the context of comparable broadcasters**

- 10.12 The Secretary of State's letter sets out a concern that, in light of Fox's compliance record in the UK, Fox may be less effective than Sky at ensuring compliance with broadcasting standards. We have therefore considered Fox's compliance record and Sky's compliance record over the past five years<sup>247</sup> and have compared this with the compliance record of similar broadcasters.

### **We have considered Sky's compliance record since 2012**

- 10.13 Sky holds 54 broadcast licences issued by Ofcom.<sup>248</sup> These licences cover services including Sky News, Sky 1, Sky Atlantic, Sky Sports and Sky Cinema channels. They also include licences for +1 services, HD services and services which are licensed in the UK but directed at audiences in the Republic of Ireland.
- 10.14 Figure 10.1 sets out the number of breaches of the Broadcasting Code which we have recorded against services provided by Sky under Ofcom broadcast licences over the previous five years.

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<sup>245</sup> Ofcom. *The Broadcasting Code*. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>246</sup> In addition to the Ofcom Broadcasting Code, licensees are required to comply with the Code on the Scheduling of Television Advertising (COSTA), the Cross-promotion Code, the Code on the Prevention of Undue Discrimination between Broadcast Advertisers (CUBPA) and the UK Code of Broadcast Advertising (the BCAP Code).

<sup>247</sup> We have taken account of investigations concluded between 1 April 2012 and 1 April 2017.

<sup>248</sup> Sky also holds a 50% stake in AETN UK, which holds a further 22 Ofcom broadcast licences. We understand that Sky does not have operational or editorial control over AETN UK so have not considered breaches recorded against AETN UK services as part of Sky's compliance history.

**Figure 10.1 Breaches of the Broadcasting Code recorded against Sky since 2012**

Nature of issue	Breached in last five years	Resolved in last five years
Protection of under 18s	2	1
Violence	2	
Competitions/voting		1
Harm (flashing images)	3	
Offensive language	5	6
Generally accepted standards		1
Sponsorship/ Promotion	4	1
<b>Total</b>	<b>16</b>	<b>10</b>

10.15 None of the breaches we have recorded against Sky was considered sufficiently serious to warrant the imposition of a sanction.

**We have also considered Fox’s compliance record since 2012**

10.16 Fox currently holds 14 broadcast licences issued by Ofcom for services including Fox, Fox News, National Geographic, Star channels and Wild.<sup>249</sup>

10.17 Figure 10.2 below sets out the number of breaches of the Broadcasting Code which we have recorded over the past five years in respect of those services.<sup>250</sup>

**Figure 10.2 Breaches of the Broadcasting Code recorded against Fox since 2012**

Nature of issue	Breached in last five years	Resolved in last five years
Protection of under 18s	1	1
Harm (flashing images)	1	
Offensive language		
Generally accepted standards	1	
Material Misleadingness	1	
Due impartiality/elections	3	
Sponsorship/ Promotion	6	
<b>Total</b>	<b>13</b>	<b>1</b>

<sup>249</sup> Fox also holds a 50.1% stake in Baby TV.

<sup>250</sup> We are currently investigating two potential breaches of the Broadcasting Code in relation to Fox News. However, we have not yet concluded on whether or not a breach has occurred.

10.18 We did not consider any of the breaches recorded against Fox sufficiently serious to warrant a sanction.

**We have considered the compliance records of Fox and Sky in the context of those of comparable broadcasters**

10.19 We have also considered the track record of Fox and Sky with that of two broadly comparable broadcasters, Viacom and Discovery, by way of comparison.

10.20 Viacom is an international media group broadcasting channels such as MTV, Nickelodeon, Comedy Central, Paramount and VH1. In the UK, it has owned Channel 5 since 2014. Viacom holds 54 broadcast licences issued by Ofcom. These include additional licences required to broadcast on the digital terrestrial platform and licences for services broadcasting outside the UK. Figure 10.3 sets out the number of breaches we have recorded against Viacom services in the last five years.

**Figure 10.3 Breaches of the Broadcasting Code recorded against Viacom since 2012**

Nature of issue	Breached in last five years	Resolved in last five years
Protection of under 18s	2	
Competitions		1
Offensive language	9	3
Sponsorship/promotion	1	
<b>Total</b>	<b>12</b>	<b>4</b>

10.21 Discovery is also an international media group with broadcast interests in the UK. Its portfolio includes a range of channels including Discovery Channel, Animal Planet and TLC. Discovery holds 101 broadcast licences issued by Ofcom. The majority of these licences are for feeds of channels broadcasting to countries other than the UK. Figure 10.4 sets out the number of breaches we have recorded against Discovery services over the past five years.

**Figure 10.4 Breaches of the Broadcasting Code recorded against Discovery since 2012**

Nature of issue	Breached in last five years	Resolved in last five years
Protection of under 18s	3	
Offensive Language	4	
Sponsorship/promotion	3	
Advertising scheduling	3	1
<b>Total</b>	<b>13 (including 1 sanction)</b>	

10.22 Taking the number of breaches recorded against Viacom and Discovery into account, Fox’s compliance record is on a par with that of comparable broadcasters.

**We have paid particular attention to Fox News’ impartiality and accuracy**

10.23 A number of respondents raised concerns about the nature of the content broadcast on Fox News and the extent to which its approach to impartiality and accuracy may call into question Fox’s commitment to broadcasting standards. We have therefore paid particular attention to Fox News’ record of compliance with the rules of the Broadcasting Code on due impartiality and due accuracy.

10.24 The Broadcasting Code explains that due impartiality means that “*the approach to impartiality may vary according to the nature of the subject, the type of programme and channel [and]...the likely expectation of the audience as to content*”<sup>251</sup>. Our guidance and our approach to the application of the rules on impartiality reflect this.<sup>252</sup>

10.25 Fox News is a US news channel, directed at US audiences, which is available in the UK. The average audience size for Fox News in the UK is 2,000 viewers. The people who watch it in the UK are aware that it is a US channel and their expectations are different. It is not a main source of news in the UK.

10.26 We have not found Fox News to have breached the accuracy and impartiality provisions of the Broadcasting Code in respect of its news programming. We have, however, recorded breaches against Fox News in respect of non-news content under rules concerning materially misleading content on one occasion and the rules of due impartiality and elections on three occasions.<sup>253</sup> We did not, however, consider any of those breaches sufficiently serious to warrant the imposition of a sanction.

10.27 On this basis, we have recorded relatively few breaches of the accuracy and impartiality rules against Fox News. Consequently, we do not consider that the

<sup>251</sup> Ofcom. *The Broadcasting Code*. <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

<sup>252</sup> Ofcom. *Guidance Notes on Section 5 Broadcasting Code*. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf)

<sup>253</sup> See Broadcast and On Demand Bulletins 288, 311, and 317. <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>

approach to accuracy and impartiality by Fox News is suggestive of a lack of genuine commitment to the attainment of broadcasting standards.

### **Our assessment of its compliance record in the UK does not indicate that Fox lacks a genuine commitment to the attainment of broadcasting standards**

- 10.28 We have recorded a similar number of breaches of the Broadcasting Code against Fox and against Sky, despite the fact that Fox broadcasts significantly fewer licensed services. That could be considered to raise concerns that Fox's compliance with the Broadcasting Code is weaker than Sky's. However, as set out above, when compared to other large broadcasting groups, Fox's record is on a par. This suggests that it may be the case that Sky has a particularly good record, rather than that Fox has a record that gives cause for concern. None of the breaches recorded against Fox has warranted a sanction.
- 10.29 We do not therefore consider that the breaches of the Broadcasting Code recorded against Fox indicate a lack of genuine commitment to the attainment of broadcasting standards.

### **In addition, we have considered the compliance of News Corp newspapers with the Editors' Code**

- 10.30 We have also considered the recent track record of regulatory compliance by newspaper titles operated in the UK by News Corp, and the extent to which this may provide an indication of whether Fox has a genuine commitment to the attainment of the broadcasting standards objectives. Specifically, we have considered complaints against News UK titles adjudicated and then upheld by the press regulator, IPSO, over the last three years.
- 10.31 We note that the Editors' Code of Practice is a voluntary Code that members of the press subscribing to have undertaken to maintain. By contrast, owing to the nature of the more intimate relationship between broadcast media and the viewer or listener<sup>254</sup>, Parliament has established a regime in the Communications Act 2003 (and its predecessors) which goes further than the Editors' Code of Practice in prescribing the material that may or may not be broadcast in order to ensure the protection of audiences. If there were a significant number of breaches of the Editors' Code of Practice, it may be necessary to further investigate the differences between the regimes. We have therefore first considered whether the number of breaches of the Editors' Code of Practice by News Corp titles indicate that there may be a concern in respect of the broadcasting standards consideration.
- 10.32 Figure 10.5 sets out the number of breaches of the Editors' Code over the past three years by the largest newspaper groups that are members of IPSO.<sup>255</sup>

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<sup>254</sup> *R. (on the application of ProLife Alliance) v BBC*, House of Lords, 15 May 2003.

<sup>255</sup> Guardian Media Group, Nikkei and Lebedev are not members of IPSO and are not therefore subject to the Editors' Code of Practice.

**Figure 10.5 Breaches of the IPSO Editors' Code by Newspaper group recorded since 2014 (national papers and websites only)<sup>256</sup>**

Newspaper group	Breaches	Publications included
News UK (wholly owned by News Corp)	21	The Sun, Sunday Sun, The Times, Sunday Times, times.co.uk, sun.co.uk, sundaytimes.co.uk
DMGT	13	Daily Mail, Mail on Sunday, Mail Online
Trinity Mirror Group	4	Daily Mirror, Sunday Mirror, Mirror.co.uk, Sunday People
Northern and Shell	23	Daily Express, Sunday Express, Daily Star, Daily Star Sunday, express.co.uk, Sundayexpress.co.uk, dailystar.co.uk
Telegraph Media Group	11	Daily Telegraph, Sunday Telegraph, telegraph.co.uk
Johnstone Press	0	The i

10.33 We do not consider that the number and nature of breaches of the Editors' Code of Practice by News Corp titles gives rise to concerns in respect of the broadcasting standards consideration. The number of breaches recorded against News Corp titles are similar to those of other comparable media groups and we do not consider that, of themselves, the number of breaches indicates a disregard for the Editors' Code of Practice. News Corp titles publish a significant number of stories. In consequence, we do not consider that it provides a basis to infer a lack of commitment to the attainment of broadcasting standards.

## **We have also looked at Fox's and Sky's broadcast compliance beyond the UK**

10.34 Many countries have some form of broadcast regulation in place. We note, however, that the approaches adopted in different countries to regulation differ from one another and from the UK, depending upon the legal, political and social context. For example, more authoritarian regimes which are not subject to the requirements of the European Convention on Human Rights or similar rights to freedom of expression may adopt a more interventionist approach to broadcast regulation. Furthermore, even where broadcasting rules may be similar, the approach to enforcement taken by relevant authorities may differ substantially depending upon the local context.

10.35 Sky has broadcast interests in five countries.<sup>257</sup> Fox is a global media company with broadcast interests in over 170 countries.<sup>258</sup> To help inform our assessment, we asked Sky and Fox for details of breaches of broadcasting rules in the jurisdictions in which they operate.

10.36 In response to our requests for information, Sky informed us that its services have been found in breach of broadcasting standards in Germany twice and in Italy eleven times in the last five years. These breaches related to issues of protection of minors (twice), distinction between advertising and editorial content<sup>259</sup> (once), limits on

<sup>256</sup> <https://www.ipso.co.uk/rulings-and-resolution-statements>

<sup>257</sup> Sky. *Sky at a glance*. <https://corporate.sky.com/documents/annual-report-2016/at-a-glance.pdf>

<sup>258</sup> Fox. *Annual Report 2016*, p 8. [https://www.21cf.com/sites/default/files/uploaded/investors/annual-meeting/2016\\_21cf\\_annual\\_report.pdf](https://www.21cf.com/sites/default/files/uploaded/investors/annual-meeting/2016_21cf_annual_report.pdf)

<sup>259</sup> Commercial references means references within programming to a product, service or trade mark, product placement, programme-related material and sponsorship.

advertising (seven times), advertising of alcohol (twice) and impartiality during elections (once). In each case a fine was levied by the relevant regulator.

- 10.37 In response to our requests for information, Fox indicated that its services have breached local broadcasting rules in the last five years in Argentina, Brazil, Bulgaria, India, Indonesia, Italy, Netherlands, South Korea, Taiwan and Turkey. The largest number of breaches occurred in Turkey during this period.
- 10.38 There are few jurisdictions in which Fox has been found to have breached broadcasting rules to any significant extent. Those in which more regular breaches have occurred are jurisdictions where we cannot draw useful parallels given the political and cultural differences between those jurisdictions and the UK.
- 10.39 The breaches most relevant to our analysis were those recorded within the EU, where a similar approach to broadcasting standards has been adopted. Fox services have been found in breach of broadcasting standards rules in Italy on four occasions within the last five years. Each breach related to rules limiting advertising and, on each occasion, a fine was levied. Fox services breached broadcasting standards in the Netherlands on one occasion in the last five years. No fine or other action was taken.
- 10.40 Fox's and Sky's compliance records overseas do not in our view present a cause for concern regarding the commitment of the parties to the attainment of the broadcasting standards objectives. Neither party has a significant number of breaches in relevant jurisdictions over the past five years, and we do not consider therefore that their compliance record is indicative of concerns in relation to the broadcasting standards consideration.

### **Fox has introduced new compliance arrangements and procedures to address concerns which arose during our investigation**

- 10.41 Under the terms of its licence, Fox News, like any channel broadcast in the UK, must have in place procedures to ensure compliance with broadcasting standards, and to make sure that those procedures are adhered to. A lack of compliance procedures does not mean that a channel will necessarily breach broadcasting standards, but it may foretell a risk of future breaches, which is why the licence condition is there in the first place.
- 10.42 During the course of our investigation of the proposed transaction, we found that Fox had not put in place adequate procedures to ensure the compliance of Fox News' content with the Broadcasting Code. We wrote to Fox to express our concerns and Fox has now supplied us with details of new compliance arrangements it has introduced and a set of compliance procedures. We consider that the improvements made by Fox to the Fox News compliance arrangements and procedures are sufficient to meet the requirements of its licence.
- 10.43 However, we remain concerned that Fox did not initially have adequate compliance procedures in place for the broadcast of Fox News in the United Kingdom and only took action to improve its approach to compliance after we expressed our concerns. It is for licensees to ensure that they comply with the conditions of licences issued by Ofcom and it should not have been necessary for Ofcom to remind Fox of its obligations in this regard. We would expect Fox and other licensees to ensure that they are fully aware of the obligations which the licence places upon them and act accordingly.

10.44 Fox has an ongoing obligation to comply with its licence conditions and with the Broadcasting Code and if any further compliance concerns were to arise following the proposed transaction, we will compel Fox to take steps to address such concerns through enforcement action.

## **Our assessment has considered public statements by members of the Murdoch Family Trust**

- 10.45 Respondents to our invitation to comment raised concerns that senior Fox executives, notably Rupert Murdoch and James Murdoch, had made statements which called into question Fox's commitment to the attainment of broadcasting standards.
- 10.46 Respondents referred to a statement by Rupert Murdoch which indicated his view that Sky News would be more popular if it was more like Fox News, and that it would be possible to do this within the confines of the impartiality rules of the Broadcasting Code.<sup>260</sup> We note in respect of this statement that there is explicit reference to compliance with the Broadcasting Code. In our view this does not show that Rupert Murdoch would, if granted full control of Sky, seek to breach the provisions of the Broadcasting Code.
- 10.47 Respondents also referenced James Murdoch's MacTaggart lecture to the 2009 Edinburgh International Television Festival in which he questioned the regulatory approach to broadcasting in the UK which he appeared to consider went too far.<sup>261</sup>
- 10.48 The lecture by James Murdoch took place at a time when he was Chairman of Sky. James Murdoch was Chief Executive Officer of Sky between 2003 and 2007 before becoming Chairman from 2007 to 2012. He was reappointed as Chairman of Sky in April 2016. During the period that James Murdoch has served as Chief Executive Officer or Chairman of Sky, Sky has had a good record of compliance with the Broadcasting Code and we do not consider that it can be inferred from the statements of James Murdoch that this position would change following the transaction.

## **We have considered failures of corporate governance**

- 10.49 In the 'minded to' letter, the Secretary of State indicated that, in issuing the European intervention notice in respect of the broadcasting standards consideration, she had taken into account that Fox is the successor company to News Corporation, which owned the News of the World at a time when illegal activities relating to the phone hacking scandal were carried out. The Secretary of State referred to the Culture, Media and Sport Committee's findings of huge failings of corporate governance at the News of the World and its parent, News Corporation in the period up to 2011.<sup>262</sup> She indicated that she considers it would be appropriate for us to consider and report on the implications, if any, of these matters for the broadcasting standards public

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<sup>260</sup> House of Lords, Select Committee on Communications, First Report of Session 2007-08, *The Ownership of News*, HL Paper 122-I, paragraph 47.

<sup>261</sup> Transcript available at [http://www.thetvfestival.com/website/wp-content/uploads/2015/03/GEITF\\_MacTaggart\\_2009\\_James\\_Murdoch.pdf](http://www.thetvfestival.com/website/wp-content/uploads/2015/03/GEITF_MacTaggart_2009_James_Murdoch.pdf)

<sup>262</sup> Culture, Media and Sport Committee, (30 April 2012). *Eleventh Report Session 2010-2012: News International and Phone Hacking* HC901-1. <https://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/903/903i.pdf>

interest consideration. A number of respondents to our invitation to comment also made reference to issues of corporate governance at the News of the World.

- 10.50 We have also received a number of submissions regarding alleged corporate failings at Fox News in the United States. There have been a large number of allegations of sexual and racial harassment and a suggestion of a corporate culture which sought to cover up such allegations. The allegations that have been put to us about sexual harassment at Fox News are of an extremely serious and disturbing nature. Allegations put to us of racial harassment at Fox News are just as disturbing.
- 10.51 As set out in our separate assessment of the fitness and properness of Sky to hold broadcasting licences<sup>263</sup>, and in light of our conclusion on this, we do not consider that this evidence demonstrates that the merged entity would lack a genuine commitment to the attainment of broadcasting standards.

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<sup>263</sup> This will be published on the Ofcom website.

## Section 11

# Advice and recommendations

- 11.1 The Secretary of State has asked Ofcom to report to her on the effect of the proposed acquisition by Fox of Sky on the two the public interest considerations identified by her, namely:
- whether it may be expected to result in insufficient plurality in the number of persons with control of media enterprises in the UK; and
  - whether there would continue to be a genuine commitment to broadcasting standards by Fox and Sky following the transaction.
- 11.2 Our report must contain advice and recommendations on these media public interest considerations which may be relevant to the Secretary of State's decision as to whether or not to make a reference to the Competition and Markets Authority. We set out in this section our advice and recommendations.

## **We consider that the transaction raises public interest concerns in respect of media plurality that may justify a reference by the Secretary of State to the Competition and Markets Authority**

- 11.3 An assessment of what constitutes sufficient plurality is a matter of judgement which we have exercised with particular regard to the importance Parliament has attached to media plurality for the functioning of a healthy and informed democracy, and to the underlying principle that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions as a result of their ability to set the wider news agenda and to influence the political process.
- 11.4 As explained, we have considered Fox, Sky and News Corp together for the purposes of our analysis due to the material influence of members of The Murdoch Family Trust in each of Fox and News Corp.
- 11.5 Following the transaction, the merged entity would be the only operator in the UK with a significant presence in the provision of news on television, radio, printed newspapers and online. The transaction would bring together the largest UK-wide newspaper group (News Corp) and one of only three significant providers of television news (Sky), would increase the reach of the providers within the merged entity in the provision of radio news and would expand the reach and number of important sources of online news within the merged entity. Indeed, the strength of voice of the merged entity in this respect may be materially larger than survey data would suggest. Therefore, the merging parties could plausibly have the second largest share of news consumption, behind the BBC, and ahead of ITN since the transaction brings together:
- 11.5.1 the largest UK-wide newspaper group, where the printed press may enjoy influence which is disproportionate to its reach; and
  - 11.5.2 an important and trusted provider of television news, television being the most powerful platform.

- 11.6 We have identified that the transaction may increase the ability of members of the Murdoch Family Trust to influence the overall news agenda. There is a risk that the Murdoch Family Trust may seek to coordinate the editorial policy of news outlets under its influence by omitting certain news stories, highlighting others or using the same commentators in its newspapers and on television news. This type of coordination could weaken the editorial independence of Sky News and so give members of the Murdoch Family Trust greater influence over public opinion through Sky and News Corp news sources.
- 11.7 We have also found that the transaction may increase the influence that members of the Murdoch Family Trust have over the political process. Respondents to our invitation to comment argued that members of the Murdoch Family Trust already hold significant political influence, citing evidence that includes the Leveson Inquiry. The transaction could increase the perception among some politicians that the Murdoch Family Trust was more able to shape the editorial direction of Sky News, in order to favour one side of a political debate over another. Consequently, we consider that there is a risk that the transaction may increase the political influence of members of the Murdoch Family Trust.
- 11.8 We therefore consider that the transaction raises public interest concerns arising from the risk that members of the Murdoch Family Trust will exert greater influence over the news agenda and the political process, with its unique position on radio, television, in print and online. We consider that these concerns may justify a reference by the Secretary of State to the Competition and Markets Authority.

**We consider that there are no broadcasting standards concerns that may justify a reference by the Secretary of State to the Competition and Markets Authority**

- 11.9 The number of breaches of the Broadcasting Code by Fox is not exceptional when compared to Sky or similar channels. Fox's compliance record in relation to overseas broadcast jurisdictions does not give cause for concern.
- 11.10 We do, however, have significant concerns about the procedures that Fox News has in place to ensure compliance with our Broadcasting Code. We found that Fox News did not have adequate procedures in place to ensure compliance with our rules. Fox has put in place a new compliance process for Fox News with effect from 15 May 2017.
- 11.11 The Secretary of State also asked us to consider the effect of any failures of corporate governance on this public interest consideration. We have considered alleged corporate governance failures in the context of our separate assessment of whether Sky would remain fit and proper to hold broadcast licences following the transaction. We have concluded that the behaviours alleged at Fox News amount to significant corporate failure, however, the overall evidence available to date does not provide a reasonable basis to conclude that if Sky were 100% owned and controlled by Fox, they would not be fit and proper to hold broadcast licences.
- 11.12 In light of Fox's and Sky's broadcast compliance records and taking account of our separate assessment of whether Sky remains fit and proper to hold broadcast licences following the transaction, we do not consider that the merged entity would lack a genuine commitment to the attainment of broadcasting standards. Therefore, we consider that there are no broadcasting standards concerns which may justify a reference by the Secretary of State to the Competition and Markets Authority.

## **Fox has proposed undertakings to the Secretary of State in lieu of a reference to the Competition and Markets Authority**

- 11.13 The Secretary of State may accept undertakings in lieu of a reference to the Competition and Markets Authority if she considers them to be appropriate for the purpose of remedying, mitigating or preventing any adverse public interest effects which may be expected to result from the transaction.<sup>264</sup>
- 11.14 Fox has put forward undertakings which it would give to the Secretary of State with the intention of ensuring that Sky News will remain editorially independent and that Sky's broadcasting standards compliance arrangements will remain in place. Fox's proposed undertakings to the Secretary of State are included in full in Annex 1.
- 11.15 The key aspects of Fox's proposed undertakings are:
- 11.15.1 a commitment to maintain Sky's current compliance arrangements with any changes being subject to Ofcom<sup>265</sup> approval;
  - 11.15.2 a commitment to maintain the Sky News service for a period of at least five years and to maintain current levels of investment (in real terms) in Sky News for that period;
  - 11.15.3 the establishment of a Sky News Editorial Board, comprised of a majority of independent members;
  - 11.15.4 responsibility for the appointment and removal of the Head of Sky News and oversight of Sky News' compliance with the Sky News Editorial Guidelines lies with the Sky News Editorial Board;
  - 11.15.5 the Head of Sky News will retain editorial control over the selection of news stories and any political comment and opinion broadcast on Sky News;
  - 11.15.6 a commitment that employees and officers of Fox, or members of the Fox Board that are trustees or beneficiaries of the Murdoch Family Trust, will not attempt to influence the editorial choices of the Head of Sky News; and
  - 11.15.7 the Sky News Editorial Board will report annually to Ofcom on any attempts to influence the Head of Sky News by persons outside the Sky News editorial function and a summary of this report will be included in the Fox annual report.

### **We consider that the proposed undertakings mitigate the concerns in relation to the plurality public interest consideration**

- 11.16 The proposed undertakings seek to address our concerns in relation to the plurality public interest consideration by ensuring the editorial independence of Sky News and so establishing internal plurality within the merged entity.

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<sup>264</sup> Paragraph 3(2) of Schedule 2 to the Order.

<sup>265</sup> Fox's proposed undertakings indicate that the Sky News Editorial Board might report in various circumstances to either the Secretary of State or Ofcom, however, in light of the need to maintain political independence in broadcasting matters, we consider that it would not be appropriate for the Editorial Board to report to the Secretary of State.

- 11.17 The undertakings contain a commitment that the Head of Sky News is solely responsible for the editorial output of Sky News. The Head of Sky News is appointed and removed by a Sky News Editorial Board which itself is comprised of a majority of independent members. The proposed undertakings set out criteria for the independence of such members intending to establish independence from Fox and News Corp and its respective directors. We note, however, that aside from the initial appointments to the Sky News Editorial Board which are made by the outgoing Sky independent directors, appointments are made by a sub-committee of the Fox Board. Further, we note that on an ongoing basis the Sky News Editorial Board will comprise only a *majority* of independent members.
- 11.18 The proposed undertakings would insulate the Head of Sky News (and therefore the Sky News editorial position) from other bodies within the merged entity. This insulation may mitigate concerns relating to the strength of voice of the merged entity since it would not be in a position to speak with one voice. If the Head of Sky News is insulated from influence over editorial decisions, the position adopted by Sky News and News Corp outlets may be substantially different. We consider that the proposed undertakings mitigate the concerns identified in respect of the ability to influence public opinion by maintaining internal plurality through the editorial independence of Sky News.
- 11.19 The undertakings also contain an explicit provision whereby Fox will ensure that employees of Fox and members of the Board of Fox which are trustees or beneficiaries of the Murdoch Family Trust will not attempt to influence the editorial position of Sky News. This commitment provides comfort that members of the Murdoch Family Trust cannot use the threat of negative coverage in Sky News as a means of furthering their own political agenda. We consider that the proposed undertakings mitigate concerns that the transaction risks increasing the influence over the political process which members of the Murdoch Family Trust may enjoy.
- 11.20 We recognise that it can be difficult to ensure the effectiveness of behavioural undertakings, due to the challenges around effective monitoring and enforcement. This is particularly the case where any breach may be subtle. We received a number of responses to our invitation to comment raising concerns about the perceived ineffectiveness of past commitments in the context of commitments given in relation to the acquisition of the Times and Sunday Times in 1981 and the acquisition of Dow Jones by News Corporation in 2007.
- 11.21 The proposed undertakings provide for transparency by clear lines of reporting to Ofcom and public reporting thus allowing for more effective monitoring than in previous cases. Further, the undertakings are enforceable directly by the Secretary of State rather than by parties whose interests may not be aligned with the public interest in particular cases. We therefore consider that the proposed undertakings are more robust than what was made binding in those two cases.
- 11.22 We have considered the possibility of structural separation of Sky News from Fox. Sky's response to our information request indicated that Sky News has, over a period of time, made losses when its direct and indirect costs are compared to the share of revenues that can be directly apportioned to Sky News. Sky explained to us its rationale for maintaining Sky News is the brand value that accrues from operating a significant news provider under the Sky brand. Notwithstanding whether the parties would be prepared to offer such structural undertakings, we would have significant concerns that an undertaking based on structural separation may lead to the risk of the scale of Sky News decreasing over time, given the inherent difficulties in sustaining a loss-making unit outside of the Sky corporate structure. A degradation or

loss of Sky News could potentially present risks to plurality equal to or greater than those presented by the transaction itself.

- 11.23 We consider that the proposed undertakings mitigate the public interest concerns. The Secretary of State may decide to accept the proposed undertakings if she considers that they are appropriate to prevent, remedy or mitigate the adverse effects arising from the plurality concerns. The Secretary of State may wish to consider areas in which the proposed undertakings could be strengthened, for example, the ongoing arrangements for the appointment of the independent members of the Sky News Editorial Board and the period of Fox's commitment to maintaining its investment in Sky News.

## Annex 1

# Undertakings proposed by Fox

### OFFER BY 21ST CENTURY FOX, INC. FOR THE REMAINING SHARES IN SKY PLC

#### UNDERTAKINGS GIVEN BY 21ST CENTURY FOX, INC. PURSUANT TO PARAGRAPH 3 OF SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

#### WHEREAS:

- (a) 21CF proposes to acquire the entire issued and to be issued share capital of Sky that 21CF does not already own.
- (b) On 16 March 2017 the Secretary of State issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On [●] 2017, Ofcom provided its report to the Secretary of State on the media public interest considerations specified in the Secretary of State's European Intervention Notice pursuant to Article 4A of the Order and on [●] 2017 the CMA provided its report to the Secretary of State on the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.
- (d) The Secretary of State considers that the conditions under Article 5 of the Order for referring the Transaction to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 are met and, absent any offer of undertakings from 21CF, she would be minded to so refer the Transaction.
- (e) The Secretary of State has a discretion to accept undertakings in lieu of reference from 21CF under paragraph 3 of Schedule 2 of the Order:

*“The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as she considers appropriate undertakings to take such action as she considers appropriate.”*

- (f) The Secretary of State considers that the undertakings given below by 21CF are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** 21CF hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

#### 1. EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by 21CF, they are accepted by the Secretary of State.

## **2. COMMITMENT TO MAINTAIN CURRENT SKY COMPLIANCE ARRANGEMENTS**

- 2.1 As at the Closing Date, 21CF shall continue to maintain the current processes, arrangements and procedures that are in place as at the Effective Date, and to devote comparable resources as those devoted by Sky as at the Effective Date, to ensure that Sky complies with the standards objectives set out in section 319 of the Communications Act 2003, as described in **Annex 1** to these undertakings (the **Sky Compliance Arrangements**).
- 2.2 21CF shall not make any amendments to the Sky Compliance Arrangements without the prior approval of [the Secretary of State/Ofcom].

## **3. COMMITMENT TO MAINTAIN A NEWS SERVICE**

- 3.1 As at the Closing Date, for so long as 21CF owns more than 39.14% of the shares in Sky or a successor to Sky, 21CF shall continue to maintain a Sky-branded news service received primarily in the UK for at least 5 years from Closing Date.
- 3.2 21CF shall maintain the Operational Net Investment in its Sky-branded news service at a level not materially different (taking into account cost and revenue inflation) from Sky's level of Operational Net Investment in Sky News as set out in the Schedule attached under **Annex 2** for at least 5 years from Closing Date.
- 3.3 21CF shall procure that Sky UK Limited or any successor company that provides the Sky-branded news service will maintain financial records showing the annual Operational Net Investment in its Sky-branded news service (**Sky News Investment Report**) for at least 5 years from Closing Date. The Sky News Investment Report shall be certified by an independent auditor, with a copy provided to Ofcom.

## **4. SKY NEWS EDITORIAL BOARD**

- 4.1 As soon as practicable following the Closing Date, 21CF will establish an editorial board (the **Sky News Editorial Board**), which will be part of Sky UK Limited or any successor company that holds the licence for the Sky News service (**Sky UK**), and which will:
- (i) comprise a majority of members who are Independent Board Members (including an Independent Board Member with senior editorial and/or journalistic experience) initially appointed by the Sky independent directors and subsequently selected by the Nominating and Corporate Governance Committee of the 21CF Board;
  - (ii) be chaired by an Independent Board Member with senior editorial and/or journalistic experience;
  - (iii) be entrusted with oversight of the compliance of the Sky News TV and radio services with the Sky News Editorial Guidelines, including provisions relating to editorial independence in news reporting and compliance with Ofcom's Broadcasting Code;
  - (iv) operate under terms of reference which will stipulate that the Sky News Editorial Board will:
    - (A) be adequately resourced and have powers to review and investigate all areas within the remit of the Sky News Editorial Board;

- (B) meet at least two times a year;
  - (C) consider any representations made by the Head of Sky News as to Sky News' compliance with the Sky News Editorial Guidelines as provided for under section 4.1(iii) above and report any such representations to the 21CF Board;
  - (D) advise the 21CF Board on any issues within its remit including the Sky News Editorial Board Approvals (as defined in section 4.3) below;
  - (v) keep a written record of any matters escalated to it by the Head of Sky News as provided for in section 4.3(iii) below, and provide a copy of any such record to the 21CF Board and [the Secretary of State/Ofcom] certified as accurate by one Independent Board Member; and
  - (vi) be quorate only if at least one Independent Board Member with senior editorial and/or journalistic expertise is present.
- 4.2 21CF shall ensure that a summary of any report provided under section 4.1(v) above shall be included in its annual report.
- 4.3 21CF shall ensure that the following matters at Sky UK take place only with the approval of a majority of Independent Board Members of the Sky News Editorial Board:
- (i) the appointment or removal of the Head of Sky News;
  - (ii) any material changes to the authority or reporting relationship of the Head of Sky News; and
  - (iii) any future changes to the Sky News Editorial Guidelines. (together the **Sky News Editorial Board Approvals**).
- 4.4 21CF shall not make any subsequent amendments to the Sky News Editorial Board Approvals without the prior approval of [the Secretary of State/Ofcom].
- 4.5 21CF shall ensure that, subject to general compliance procedures and oversight, no employee or officer of 21CF, or a member of the 21CF Board who is a trustee or beneficiary of the MFT, will influence or attempt to influence the editorial choices made by the Head of Sky News (including the selection of news stories or the political comment and opinion to be broadcast on the Sky News channel).
- 4.6 The undertakings set out at 4.1, 4.2, 4.3, 4.4 and 4.5 shall remain in place for so long as News Corp, or any entities over which News Corp has material influence, or any entities which have material influence over News Corp, hold more than 10% of the voting rights in 21CF.

## **5. COMMITMENT TO ENHANCE AND MAINTAIN SKY NEWS EDITORIAL GUIDELINES**

- 5.1 As at the Closing Date, 21CF shall continue to maintain and observe the editorial guidelines that are in place in relation to Sky News as at the Effective Date, as modified according to section 4.2 below and as attached at **Annex 3** to these undertakings (the **Sky News Editorial Guidelines**).
- 5.2 As at the Closing Date, 21CF shall ensure that the Sky News Editorial Guidelines specify that:

- (i) the Head of Sky News retains editorial control over the selection of news stories and any political comment and opinion broadcast on the Sky News channel;
- (ii) subject to general compliance procedures and oversight, instructions to Sky News editorial staff including journalists shall be given only by the Head of Sky News or those to whom the Head of Sky News has delegated authority; and
- (iii) in the event that the Head of Sky News becomes aware of an attempt by any employee or officer of 21CF outside the Sky News editorial function to influence the selection of news stories or the political comment and opinion to be broadcast on the Sky News channel, the Head of Sky News will escalate such matters to the Sky News Editorial Board.

5.3 21CF shall not make any subsequent amendments to the Sky News Editorial Guidelines without the prior approval of [the Secretary of State/Ofcom].

## **6. REVIEW OF UNDERTAKINGS**

6.1 In the event of a material change of circumstances, the Secretary of State may, in response to a request from 21CF, waive, modify or substitute one or more of these undertakings. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

## **7. COMPLIANCE**

7.1 21CF shall comply promptly with such written directions as the Secretary of State may from time to time give:

- (i) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
- (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

7.2 21CF shall procure that any member of the same Group of Interconnected Bodies Corporate as 21CF complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as 21CF shall be attributed to 21CF for the purposes of these undertakings.

7.3 Where any Affiliate of 21CF is not a member of the same Group of Interconnected Bodies Corporate as 21CF, 21CF shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of 21CF for the purposes of this section 7.3.

## **8. PROVISION OF INFORMATION**

8.1 21CF shall furnish promptly to the Secretary of State or [the CMA/Ofcom] such information as the Secretary of State or [the CMA/Ofcom] considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

## **9. INTERPRETATION**

- 9.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 9.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 9.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.
- 9.4 For the purposes of these undertakings:

“**21CF**” means 21st Century Fox, Inc.;

“**21CF Board**” means the board of directors of 21CF;

“**Act**” means the Enterprise Act 2002;

“**Affiliate**” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“**business**” has the meaning given by section 129(1) and (3) of the Act;

“**Closing Date**” means the date on which 21CF acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

“**CMA**” means the Competition and Markets Authority;

“**Effective Date**” means the date that, having been signed by 21CF, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

“**Group of Interconnected Bodies Corporate**” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“**Independent Board Member**” means a member of the Sky News Editorial Board who:

- has not been an employee of 21CF, News Corp or any member of the same Group of Interconnected Bodies Corporate as 21CF or News Corp within the last five years;
- does not have, and has not had within the last three years of the date of their first appointment to the Sky News Editorial Board, a material business relationship with 21CF or News Corp either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship;
- has not received and does not receive remuneration from 21CF or News Corp (other than a fee paid by 21CF for their service as a member of the Sky News Editorial Board), does not participate in 21CF's or News Corp's share option or performance-related pay scheme, and is not a member of 21CF's or News Corp's pension scheme;

- does not have close family ties with any of 21CF's or News Corp's advisers, directors or senior employees;
- does not have significant links with directors of 21CF or News Corp through involvement in other companies or bodies;
- does not represent a significant 21CF or News Corp shareholder; and
- has not served on the board of 21CF or News Corp within nine years from the date of their first appointment

“**MFT**” means the Murdoch Family Trust;

“**News Corp**” means News Corporation;

“**Ofcom**” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

“**Operational Net Investment**” means the revenue attributable to the relevant business minus direct and indirect costs attributable to the relevant business (excluding capital expenditure);

“**Order**” means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, as amended by the Enterprise Act 2002 (Protection of Legitimate Interests)(Amendment) Order 2014;

“**Secretary of State**” means Secretary of State for Culture, Media and Sport;

“**Sky**” means Sky plc;

“**Sky News**” means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels currently branded “Sky News” and “Sky News HD” provided by Sky UK and received primarily in the United Kingdom and the Republic of Ireland and related services under the Sky News brand and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, “Sky Sports News” is a separate business;

“**Sky Compliance Arrangements**” has the meaning given to it in section 2.1 above;

“**Sky News Editorial Guidelines**” has the meaning given to it in section 5.1 above;

“**Sky News Editorial Board**” has the meaning given to it in section 4.1 above;

“**Sky News Editorial Board Approvals**” has the meaning given to it in section 4.2 above;

“**Sky UK**” has the meaning given to it in section 4.1 above; and

“**Transaction**” means the proposed acquisition by 21CF of the entire issued and to be issued share capital of Sky that 21CF does not already own.

## ANNEX 1

### SKY COMPLIANCE ARRANGEMENTS AS AT EFFECTIVE DATE

21CF shall maintain the following arrangements that are in place within Sky as at the Effective Date designed to ensure compliance with the standards objectives set out in section 319 of the Communications Act 2003 (“**the Standards**”):

1. Dedicated Editorial Policy and Compliance staff with primary responsibility for ensuring editorial output complies with the Standards.
2. Editorial Policy and Compliance staff comprising sufficient persons to ensure day-to-day compliance with the Standards and appropriately structured for the discharge of the following key responsibilities:
  - (a) acting as the main point of contact with respect to any content compliance matters across all Sky channels (including staff specifically focusing on Sky News and Sky Sports News compliance) and the main point of contact with Ofcom on all matters relating to the Standards;
  - (b) serving as points of escalation for day-to-day compliance and operational issues relating to the Standards; and
  - (c) reviewing content to ensure compliance with the Standards.
3. The provision of effective training to the Editorial Policy and Compliance staff to ensure they are adequately versed in the requirements of the Standards to discharge their compliance responsibilities.
4. The provision of effective training to other relevant staff outside of the Editorial Policy and Compliance staff involved in the production and broadcast of the Sky channels.

## ANNEX 2

### SKY NEWS OPERATIONAL NET INVESTMENT SCHEDULE

	FY 2016/17	Further details
	£m	
Revenues <sup>1</sup>	[X]	Includes: wholesale of Sky News channel [X]; international distribution agreements; spot advertising; sponsorship and online revenue; and syndication / distribution / radio revenue.
Direct costs	[X]	Includes: headcount costs; coverage/ newsgathering costs; production, studio & archive costs; Sky News International, digital, radio, and channel management.
Indirect Costs <sup>2</sup>	[X]	Includes: satellite / freeview capacity; music licence fees & creative services; corporate & functional / facilities; and capex depreciation.
<b>Operational Net Investment</b>	[X]	

<sup>1</sup> Does not include: Sky Media [X]% sales commission for provision of ad sales.

<sup>2</sup> Does not include: property costs and facilities (rates and rent); marketing costs (advertising costs); equipment support costs or broadcast operations.



### ANNEX 3

#### UPDATED SKY NEWS EDITORIAL GUIDELINES

*[We note that these editorial guidelines were not provided within the proposed undertakings provided by Fox. We also note that what we understand to be the current Sky News editorial guidelines are available at:*

*[http://news.sky.com/docs/sky\\_news\\_editorial\\_guidelines.pdf](http://news.sky.com/docs/sky_news_editorial_guidelines.pdf)*

## Annex 2

# Summary of responses to invitation to comment

- A2.1 In total, we received 51,555 responses to our invitation to comment. Of these, we identified 42 detailed responses. Of these, 20 were from organisations, nine from politicians, six from academics and media professionals, three from lawyers, and four detailed responses from members of the public. Among these detailed responses, 41 opposed the transaction and one was broadly in favour.
- A2.2 The remaining 51,513 responses were from members of the public. The vast majority of these opposed the proposed transaction, although 25 responses were in favour.
- A2.3 As part of this process, DCMS provided us with 19 submissions received as part of the Secretary of State's consideration of whether to issue a European intervention notice. We have considered alongside the direct responses to our invitation to comment.
- A2.4 Some of the responses to the invitation to comment were also relevant for our separate assessment of the fitness and properness of Sky to hold broadcast licences. We have also considered these responses as part of that process.

## Main themes arising from responses from members of the public

- A2.5 Individuals who submitted responses opposing the proposed transaction presented arguments which raised concerns about both the plurality consideration and the broadcasting standards consideration. A significant majority – over 30,000 – related to media plurality only, with around 3,500 relating just to broadcasting standards and approximately 10,000 covering both issues. The remainder either related to our separate assessment of Sky's fitness and properness to hold broadcast licences, or a variety of other, unrelated, topics.
- A2.6 Of the responses that we received relating to the plurality consideration, respondents were generally concerned about the expansion of influence and the concentration of power that the transaction would give to Rupert Murdoch. A significant number of responses noted that if the transaction goes ahead it would mean that Rupert Murdoch would have influence in millions of households in Britain, which would give him even more influence over news reporting than he has already.
- A2.7 Many respondents noted that the proposed transaction would give Rupert Murdoch and his family more control over the media, meaning that different perspectives are not heard and a smaller number of voices dominate public debate.
- A2.8 Many responses also argued that Rupert Murdoch attends more meetings with powerful politicians than any other media owner and, as such, has unprecedented influence over politicians and the political process. Reference was made to what respondents saw as his interference in the 2016 EU Referendum and in recent general elections.
- A2.9 Many responses also argued against the suggestion that because of the many different news sources that are available online, Fox taking control of Sky does not

matter as much as it did at the time of the previous attempt by Rupert Murdoch to acquire full control of Sky. A counter argument was given by many responses that traditional broadcasters and newspapers still have a huge influence on the political debate, including online.

- A2.10 Relating to the commitment to the broadcasting standards consideration, responses were generally concerned about the risks to impartiality of Sky News if the transaction were to go ahead. Respondents were concerned that Sky News would quickly become like Fox News and would be subject to bias reflecting the political positions of Rupert Murdoch. Many responses also referred to ‘fake news’, citing examples of stories on Fox News that they considered to have deliberately distorted the truth.
- A2.11 More specifically, examples were given in responses about concerns about the way in which Rupert Murdoch’s UK papers deliberately push what respondents saw as a bigoted view of many minorities for political ends.
- A2.12 Many responses referred to Fox News’s coverage of the Westminster terrorist attack in March, and expressed concerns that Sky’s coverage of events following the proposed transaction would be the same. Many responses also referred to the phone hacking scandal.
- A2.13 Of the small number of responses in favour of the transaction, respondents cited several reasons including that:
- 2.13.1 the increased power and profile of right-leaning media outlets is a necessary counterbalance to ‘liberal bias’ in the media, particularly the BBC.
  - 2.13.2 freedom of choice means that Rupert Murdoch should be free to do what he wants. Respondents noted that people have a choice whether to subscribe to Sky or not, whereas TV viewers had no choice over paying the BBC licence fee.
  - 2.13.3 broadcasting standards are an infringement of free speech, particularly regarding views reflecting the right of the political spectrum.

## **Main themes arising from detailed responses relating to plurality**

### **Following the transaction, the Murdoch Family Trust would have control over Fox, Sky and News Corp**

- A2.14 Many responses took issue with the point raised by Fox in its letter to DCMS on 8 March 2017 regarding the Murdoch Family Trust’s minority shareholding in Fox (and hence the combined Fox/Sky). Respondents including the Media Reform Coalition and Rt Hon Ed Miliband MP, Rt Hon Kenneth Clarke MP, Rt Hon Sir Vince Cable MP and Lord Falconer of Thoroton (‘Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer’), referred to our established guidance about ‘de facto’ control:

*“Even where a person does not have a majority interest, he is regarded as controlling a company where it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly*

*or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes.”<sup>266</sup>*

- A2.15 The Media Reform Coalition, Avaaz and the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submissions argued that the Murdoch Family Trust already had de facto control over both Fox and Sky. The Media Reform Coalition said that there are “*legitimate questions raised as to whether the current structure already affords the [Murdoch Family Trust] de facto control over both [Fox] and Sky*”. Avaaz’s submission included information of two shareholder lawsuits (the Iron Worker and Stricklin shareholder complaints), which Avaaz said call into question the independence of many key directors and rest on allegations that Rupert Murdoch had de facto control of the News Corp board.
- A2.16 Avaaz also challenged the suggestion, contained in Fox’s representations to the Secretary of State, that the Murdoch Family Trust’s current control of both Fox and News Corp is diluted by independent directors and shareholders. Its submission stated that the Murdoch Family Trust achieves de facto control by using “cross-holdings” of voting shares in both Fox and News Corp, as well as appointing sympathetic board directors with a common political outlook and longstanding business or career ties to the family. Avaaz suggested that this would ultimately lead to a lack of objection by independent directors of any steps being taken to distort Sky News coverage in a direction that favours the political outlook of the Murdoch family, should the transaction go ahead.
- A2.17 Many respondents drew attention to James Murdoch’s appointment as Chairman of Fox in 2015 and Rupert Murdoch’s appointment as acting Chief Executive Officer of Fox News in 2016 as evidence of the ability of the Murdoch Family Trust to wield influence beyond its shareholding, and the willingness of other shareholders, as well as Board members, to accommodate their wishes.
- A2.18 Both Avaaz and the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submissions suggested that the Murdoch Family Trust uses the cooperation of two minority shareholders in Fox, Jeffrey Ubben and Prince Alwaleed bin Talal, to win a majority of 50% in key votes.
- A2.19 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission also argued that in practice the independent shareholders do not act as a check on the Murdoch Family Trust as they do not always attend annual general meetings and therefore the Murdoch Family Trust share of voting stock (backed up by Prince Alwaleed bin Talal) is often enough to win key votes. The submission indicated that the directors of News Corp and Fox include several long-time Murdoch employees, who have failed to effectively challenge the Murdoch Family Trust at key points. It argued that the fact of common control over the two companies by the Murdoch Family Trust means the plurality problem posed is the same as in 2010, when News Corp attempted to acquire shares in Sky: the Murdoch family acquiring too much influence.
- A2.20 Avaaz also drew attention to an alleged lack of transparency surrounding Elaine Chao’s resignation in January 2017 from the News Corp board, saying that it resulted in News Corp no longer having a majority of independent directors as

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<sup>266</sup> Ofcom, (April 2006). *Ofcom guidance on the definition of control of media companies*. [http://stakeholders.ofcom.org.uk/binaries/consultations/media2/statement/media\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/media2/statement/media_statement.pdf)

defined by NASDAQ – and that Fox is therefore incorrect in those submissions it has made which said that both companies have independent Boards.

- A2.21 However, both the Media Reform Coalition and the LSE Media Project acknowledged that, currently, Fox's minority stake in Sky offers a decisive constraint on the reach of the Murdoch Family Trust's influence, especially regarding Sky News. The Media Reform Coalition said that the proposed transaction would *"remove any remaining doubts about de facto control in respect of Sky and significantly diminish structural checks and balances on influence by the Murdochs"*. This was a point echoed by the LSE Media Policy Project who said that Fox does not currently have control – de facto or de jure – of Sky, but the transaction would give Fox 100% control of Sky. This would mean a material change in the power of Fox over Sky. The LSE Media Policy Project said that *"once in control of Sky shares [Fox] would be able to use these to influence the direction of Sky, including the appointment of Sky Board members"*.
- A2.22 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the increase in influence that would accrue to the Murdoch Family Trust through taking full control of Sky would be substantial, and that the transaction would increase the control of Fox and the Murdoch Family Trust over Sky, therefore reducing media plurality in the UK.
- A2.23 Their submission referred to our 2010 report on the proposed takeover of Sky by News Corp suggesting that our conclusion then that full control would result in a *"reduction in the number of persons with control of media enterprises"* should be identical in this proposed takeover. The submission questioned Fox's statement that *"the degree of common ownership between Sky and News Corp newspapers would be limited to a common shareholding of approximately 39% in both companies held by the [Murdoch Family Trust]"*. It quoted Fox's statement that *"it is clearly established that in reviewing the effects of a transaction on media plurality the Secretary of State and Ofcom must consider the extent of control actually exercised over media outlets that are under common ownership"*.
- A2.24 The submission argued that the *"concentration of 'too much influence in too few hands' is what matters from the perspective of plurality policy"*. It went on to suggest that there is *"substantial evidence"* that influence over the operations of Fox and News Corp is concentrated in the Murdoch Family Trust. The submission referenced the Murdoch Family Trust's approximately 39% shares in Fox and News Corp, which gives it the largest share of votes held by any one shareholder in those companies, and that members of the Murdoch family occupy top executive positions at both companies. The submission also noted that Rupert Murdoch has maintained executive control of News Corporation since it split into Fox and News Corp in 2013, and the Murdoch Family Trust also owns non-voting stock in Fox and News Corp, which could be traded for voting stock to shore up control. The response also suggested that News Corp has adopted a *"poison pill"* to prevent challenges to Rupert Murdoch's control following the split into News Corp and Fox.
- A2.25 Their submission also argued that although the effect of the transaction would be to leave the number of available news outlets unchanged, the number of owners of news providers would reduce. Post-transaction, Fox would have full ownership and total control over Sky, enabling it to take decision involving Sky which are in the exclusive interests of Fox.
- A2.26 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission said that this would lead to a *"reduction in the number of persons with control of media"*

*enterprises in the UK, with Sky ceasing to be a distinct media enterprise*". Their submission argued that this should be an important factor in our assessment due to plurality policy's focus on "*preventing any one media owner, or voice, having too much influence over public opinion and the political agenda*". They suggested that the availability of news sources from different media owners must therefore be considered.

### **The transaction would result in decreased plurality**

- A2.27 Several responses (the Media Reform Coalition, the National Union of Journalists (NUJ), the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission; [X], Professor Steven Barnett, [X], the TUC South West, [X], and the Joint Trade Union response) argued that the effect of the transaction would result in a reduction in plurality.
- A2.28 Many of these responses also observed that if the transaction were approved, that Fox/Sky and News Corp would be the only organisation to have a significant presence over all four platforms (newspapers, radio, TV and online).
- A2.29 The TUC South West said that it believed the media environment in the UK was already concentrated, and emphasised the control of a substantial share of wholesale news provision that Sky and News Corp would have on all four platforms if the transaction went ahead.
- A2.30 The NUJ stated that "*if the transaction goes ahead it will mean the Murdochs will effectively become the largest newspaper provider, the third-largest TV provider, the second-largest provider of radio news content and the fourth-largest online news provider*". It argued that this would make Rupert Murdoch the only person ever to control a substantial share of wholesale news provision on all the main news platforms and be a strong presence on leading third-party sites. It argued that risk posed by further concentration of media ownership undermines the public interest.
- A2.31 [X] wrote on behalf of many his constituents who have "*shared their concerns with him that Rupert Murdoch should not control any more of the UK's media*". His letter stated that although the deal may be acceptable to many shareholders, that does not mean it is in the public interest.
- A2.32 An MP [X] wrote stating that her office had been contacted by over 100 constituents who strongly opposed the proposed transaction. She said it is "*self-evident that the transaction would give Rupert Murdoch disproportionate influence over the UK's media*" and noted his dominance over news in other countries such as the USA and Australia.
- A2.33 As part of their response to the invitation to comment, 38 Degrees commissioned two rounds of public opinion polling, carried out by YouGov between 8-9 March 2017 (sample size was roughly 1500, aged 18+). 68% of the people polled felt that a transaction would give Rupert Murdoch too much control over UK media.

### **The rise of online news does not increase plurality but reduces it**

- A2.34 Several respondents (the Media Reform Coalition, the NUJ, the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission, [X], Professor Steven Barnett, and [X]) took issue with the argument that the rise of online news was creating greater plurality. Respondents argued that while the rise of online is generally held to be a force for greater pluralism in news, this does not mean that

control over news production has become more dispersed. They argued instead that the internet amplifies the reach of existing news providers, including News Corp titles, despite the illusion of there being more content available.

- A2.35 Both the Media Reform Coalition and the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission, argued that intermediaries (such as Facebook, Twitter, Google) increase the ability of traditional news providers to exert influence on the news agenda. The Media Reform Coalition gave the example of engagement with Sky News on Twitter outperforming all other new brands, except DMGT. The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the role of intermediaries in amplifying certain news stories over others should be closely scrutinised, and that intermediaries do not necessarily detract from the power of conventional news brands to shape debate, they can in fact enable dominant brands to further their own reach.
- A2.36 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the analytical focus of any plurality assessment must be on control over original news production capacity as “*news producers determine what the news is*”. This gives those who own or control news producers considerable influence as they can influence what subjects are on the news agenda and therefore what is on the political agenda. Their submission stated that “*although the rise of social media such as Facebook or Twitter may have reduced the ability of news producers to ensure their framing of a story, they can still set the agenda for what is discussed in ways that few others can*”.
- A2.37 [§] argued that the idea that social media has expanded the number of news sources available is false, as these are “*merely aggregators of news which often distribute content produced by News Corporation and Fox*”. The submission argued that, if anything, the new digital routes have expanded the influence of outlets owned by the Murdoch Family Trust.
- A2.38 The Media Reform Coalition noted that news aggregators such as Yahoo News’s wholesale provision amounted to a very minor share of online news articles. It also noted that Sky News was the dominant force on Yahoo News, with nearly twice as many articles as the second most significant contributor.
- A2.39 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission addressed Fox’s argument in its submission to DCMS that in the online environment there are lower barriers to entry allowing new online-only players to enter the news market, and, thus, that plurality is increasing. The submission argued that if the lower barriers to entry had created a range of new suppliers then “*we might expect Fox to be able to point to more than two*”. It took issue with Fox’s citation of BuzzFeed and Huffington Post as examples of growing plurality and quoted disparaging remarks by Rupert Murdoch about these organisations.
- A2.40 The submission argued that there is no real sign of an increasing plurality of national news producers, just their convergence onto the same platform with the consequence that those institutions who remain able to fund original news production will see their agenda setting power increase.
- A2.41 The TUC South West also said that Sky and News Corp have a strong presence on third party websites such as YouTube and Yahoo, further extending their reach.

## Online news has radically reduced profitability for news publishers and is reducing plurality

- A2.42 Respondents including [✂], Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer and the LSE Media Policy Project argued that the internet has fundamentally undermined the basis of commercial news production, and will lead to a wave of consolidation and market exit in the news industry.
- A2.43 The LSE Media Policy Project Paper argued that with the dramatic reduction of print advertising, and with digital advertising increasingly dominated by Google and Facebook, the sustainability of news media will depend increasingly on paid relationships (subscriptions or pay per access). It stated that full acquisition of Sky would *“enhance Fox and News Corp’s ability to combine with Sky to offer discounted subscriptions and maximise revenues through direct payment, thereby disadvantaging independent competitors and ultimately reducing available news plurality”*.
- A2.44 It stated that, due to the rise of online news, if there are fewer news organisations producing news there will, de facto, be less diversity in news production. Similarly, if there is less news production capacity within each news organisation – fewer journalists doing journalism as well as editing and publishing news – there will be less diversity in news production.
- A2.45 The LSE Media Policy Project stated that over the last five years most major UK news organisations have reduced their news production capacity, including evidence of a steep decline in journalists and editorial staff at The Independent and Independent on Sunday, The Guardian and The Telegraph Group. It also indicated that the decline in the number of journalists and editorial staff has been even more dramatic in the UK local press.
- A2.46 The LSE Media Policy Project argued that there may be more content published online, but *“if this is for marketing or entertainment then it does not address the public need for media plurality”*. They concluded that the proposed merger will *“lead to a further reduction in the plurality of news production in the UK, and a consequent increase in the influence of fewer owners – specifically the owners of Fox and News Corp”*.
- A2.47 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the rise of online advertising has coincided with what it called *“the annihilation of the core revenue streams of print newspapers: paid circulation and print advertising”*. The submission said that online advertising revenue is dominated by Google and Facebook, who take around two-thirds of online advertising revenue in the US and the UK, and are set to dominate growth in the future. Meanwhile, many UK news publishers do not attempt to charge for access to the news they produce.
- A2.48 The submission said that the shift to online is a shift towards a platform which, though it offers many benefits of choice, convenience and instantly updated information, is a radically more difficult place to make money out of news production and quoted Robert Thomson, the CEO of News Corp, saying that the value of serious content has been commodified by Google.
- A2.49 The submission said that lower barriers to entry have led to a rise of recycled content published on line which means, per the submission, that returns for those that engage in original production are smaller than ever. The submission went on to

argue that the increased amount of content online has reduced the importance of 'availability' as a plurality metric because, while there is a huge amount of available content, the proportion of total available content responsible for most consumption will be much smaller than in print.

- A2.50 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the challenges posed by the internet for journalism are greatest at the level of original news production, and that this is where the transaction raises major plurality concerns. It argued that allowing the Murdoch family to acquire full control over Sky News in addition to the newspapers that they own would be "*profoundly damaging to media plurality in the UK*". The submission argues that there is no suggestion that, absent the transaction, Sky would be unable to survive, or to continue to fund Sky News and as such, "*the transaction cannot be justified as a necessary compromise in the level of plurality we accept*".
- A2.51 The submission suggested that because the internet has worsened the profitability of news production, commercial news providers are less and less able to compete with entertainment alternatives, and are therefore making their news content more and more like entertainment. It argued that the most obvious way to deal with this situation is to expand the size of public subsidy for news and suggests that both Rupert and James Murdoch have long been publicly hostile to the idea of public subsidy for journalism. The authors believe that if this transaction were approved, the Murdoch family would use the added influence given by full control of Sky News to lobby, both publicly and privately, for further cuts to publicly funded media.

### **The assessment of wholesale news providers is particularly important for media plurality**

- A2.52 The Media Reform Coalition stated that the way in which wholesale news provision is defined and assessed may have implications for how the overall picture of media plurality is determined. Although retail news channels can exercise a degree of editorial influence in formulating the news agenda, the power of the editorial voice rests primarily in the hands of wholesale providers who can determine the range of available topics, issues and timeframes. Therefore, they argued media plurality at a wholesale level should carry relatively more weight in the review than at the retail level.
- A2.53 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that the analytical focus of any plurality assessment must be on control over original news production capacity as "*news producers determine what the news is*". This gives those who own or control news producers considerable influence as they can influence what subjects are on the news agenda and therefore what is on the political agenda.
- A2.54 The proliferation of online reduces the value of availability as a plurality metric. The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that any analytical focus of plurality must be on control of original news production capacity (wholesale), rather than on the range of available content. It cited a threat to plurality through narrowing of the control of news production and argued that this should be the core focus of our assessment, as this is "*where power is exercised*".

### **Some respondents offered critiques of our measurement framework for media plurality**

- A2.55 The Media Reform Coalition argued that our review of the transaction “*provides an opportunity to refine approaches in light of the ever-changing media landscape and the emergent challenges and limitations in available data*”.
- A2.56 Both the Media Reform Coalition and the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission, argued that our change of approach to the allocation of commercial radio news provided by Sky News (through the IRN contract) undervalues Sky’s share of reference. Both responses disagreed with Ofcom’s decision in 2015 to allocate such share of reference to the relevant commercial radio provider.
- A2.57 The Media Reform Coalition provided four other recommendations which it argued should be factored into our assessment of media plurality. It suggested that:
- 2.57.1 We should give due weight to plurality assessments at the wholesale level. It noted that while the power to select and ‘brand’ news at the retail level is relevant to plurality concerns, it is not equivalent to the power exercised by those who determine newsgathering priorities.
  - 2.57.2 The share of reference metric should be treated with caution due to the lack of clarity around Sky’s wholesale provision on radio, and due to inherent issues with survey data such as the respondent’s ability to remember which news sources they use.
  - 2.57.3 Major news aggregators should not be classified as wholesale news providers. Services such as Yahoo and MSN generally carry content that is produced by other brands, including Sky News.
  - 2.57.4 The performance of news brands on social media and search engines should be considered as part of the plurality review. Services such as Google and Facebook are playing an increasingly important role in determining the news brands and content that achieve salience across their networks.
- A2.58 Professor Steven Barnett was critical in his submission of our share of reference approach to measurement of cross-platform consumption.
- A2.59 He argued that to adopt the share of reference approach uncritically misses “*dangerous concentrations*” of power elsewhere and that Fox and Sky will attempt to focus the plurality assessment on the most highly consumed TV and radio news, provided by the BBC, to deflect attention from the size and reach of the merged entity.
- A2.60 He argued that the focus on reported consumption is flawed because it significantly exaggerates the role and power of television as a source of news – citing our 2016 News Consumption Report.
- A2.61 He said that our share of reference metric substantially overstates the power of broadcast and underestimates the power of print and online because it fails to consider:
- 2.61.1 the opinion forming impact of partisan print and online media;
  - 2.61.2 the agenda setting role of newspapers for broadcasters;

2.61.3 power to influence public policy; and

2.61.4 the economies of scale and cross-fertilisation across platforms and media outlets which are further enhanced by Sky's position as the UK's second largest internet service provider.

A2.62 He stated that this was particularly serious in the UK media ecology where the power of national newspaper publishers and editors has not diminished with the decline of circulation, and where the internet magnifies established newspaper content.

A2.63 Professor Barnett was also critical of what he called "*Ofcom's lack of evidence for proxies for measuring impact*". He argued that our proxies privilege television broadcasting over other platforms. He also argued that no empirical evidence was given to justify the impact proxies in our measurement framework and stated that it was incumbent on us not only to justify with empirical evidence but also "*to invest more time in imaginative approaches to assessing the components of power outlined above*".

A2.64 Professor Barnett did not believe that the BBC's inclusion in plurality calculations should be mediated. He argued that as neither opinion forming nor news agenda setting impact are properly accounted for in our consumption based metrics, that the role of the BBC will be significantly overstated.

A2.65 His submission also argued that because of the BBC's lack of proprietorial influence, its accountability to licence fee payers and Parliament, and its policy of internal plurality, it is circumscribed in several ways that are directly relevant to calculations of plurality, and overall consumption data should be interpreted accordingly.

### **Newspapers may play a role in setting the television news agenda**

A2.66 Respondents drew attention to the amount of television news stories originating from newspapers and particularly News Corp titles.

A2.67 The LSE Media Policy Project Paper argued that "*there is evidence from both the 2015 General Election and the 2016 EU Referendum that broadcasters were heavily influenced by the front-page editorialising of the UK's press, which in turn was heavily dominated by vociferous pro-Leave campaigning both in choice of stories and in editorial comment*". It quoted the BBC's economics editor, Robert Peston, expressing frustration at the way in which BBC News was, in his view, "*completely obsessed by the agenda set by newspapers*" as well as head of Sky News John Ryley, who was quoted as saying: "*I have always been shocked from the very first time I started in [TV] news at the reliance on newspapers.*"

A2.68 ITV noted the emergence of new global online platforms, such as aggregators and social media, and the impact they have had on printed press worldwide, as well as their ability to quickly disseminate fake news.

A2.69 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission cited evidence from the General Election 2015 and the EU referendum showing the News Corp titles as the most influential on the broadcast news agenda. The submission suggested that in this way, TV news often acts to amplify the influence of newspapers and the agenda setting power of their owners.

A2.70 The submission suggested that the effect of the transaction would be to increase the Murdoch Family Trust's control over Sky News, enabling it to *"amplify further the agenda set by their newspapers"*, and to do so across a full day, with newspapers setting the agenda for the morning, and Sky News's 24-hour channel across the rest of the day. The submission said that this influence would be extended by Sky News's website and apps.

### **Members of the Murdoch Family Trust already have too much influence, particularly over politicians and the political process**

A2.71 Many respondents argued that evidence from Rupert Murdoch's history suggests that he seeks to acquire the type of influence that plurality policy aims to prevent.

A2.72 The LSE Media Policy Project Paper stated that the *"sheer scale of such direct access to government – which exceeds that of every other media organisation, including the BBC – has clear implications for the exercise of power over politicians and policy makers"*. It argued that such influence applies both to policy making of direct commercial and competitive interest to News Corp and Fox, and more widely to policy areas in which News Corp titles have expressed strong views.

A2.73 The Media Reform Coalition referenced the second part of our definition of why plurality matters: *"preventing too much influence over the political process being exercised by any single media owner"*. It cited what it called recent research that has shown that *"Rupert Murdoch and his executives already enjoy unparalleled access to the most senior figures within government, meeting regularly with the Prime Minister and Chancellor at a rate that dwarfs all other individuals or private sector organisations"*. To support this, it provided evidence of the organisations that had met most frequently with the Prime Minister and Chancellor of the Exchequer, between April 2015 to September 2016.

A2.74 Avaaz's submission suggested that Rupert Murdoch, through his political connections, has successfully lobbied Governments of different countries for his business interests in the past, and would use increased power following a successful transaction to continue to press for changes to regulations that affect his media enterprises.

A2.75 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission argued that by acquiring many different assets in the same country, *"combined with the influence Rupert Murdoch has over the editorial process, he has come to wield significant political influence over the democratic life of three countries: Australia, the UK and the United States"*.

A2.76 The submission identified what it called *"a cycle"*: Rupert Murdoch acquires news outlets in a country, offers his backing to politicians who support policies that will advantage his existing businesses or enable him to acquire new ones, and expands his influence to a point where it becomes increasingly hard for politicians to defy him without the significant political costs incurred by provoking the hostility of his news outlets.

A2.77 The submission argued that Rupert Murdoch appreciates the commercial value of the influence news outlets can give him so much, that in some cases he runs those outlets at a loss. It suggests that he seeks precisely the excessive influence over politicians that plurality policy aims to prevent.

- A2.78 Evidence was cited by the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission from a range of sources about Rupert Murdoch's hands-on approach with editors of newspapers and how he uses his media outlets as tools to secure political favours, and he uses those political favours to advance his business interests. It argued that the *"common currency of commercial strength and political influence is influence over public opinion"*.
- A2.79 It argued that politicians know the risks to themselves of supporting a policy position which Rupert Murdoch opposes and for *"these implicit threats to be as great as possible, it is necessary for Murdoch to maximise his own control over the editorial position of his news assets, and have minimal regulatory constraints"*.
- A2.80 A senior politician and another individual, Tim Lord, told us that they are aware of senior politicians and public servants who are so cowed that they would not give evidence to Ofcom for the purposes of our public interest test (or to other public bodies), for fear of retaliation.
- A2.81 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission also addressed what it described as *"Rupert Murdoch's approach to media ownership", stating that throughout his career, Rupert Murdoch has exhibited a consistent attitude towards media ownership", namely: "a preference for acquiring high-impact, politically influential media assets; strong opposition to media ownership rules and strong hostility to publicly-funded media"*.
- A2.82 The submission gave examples of Murdoch acquired assets from Australia, the UK and the US that carry political influence but are loss making. It drew attention to what it calls Rupert Murdoch's consistent, and sometimes extreme, hostility to politicians who have advocated stricter rules on media ownership, and support for politicians who have gone on to dismantle existing media ownership rules, again giving examples from Australia, the UK and the US.
- A2.83 It gave evidence that Rupert Murdoch has long been hostile to publicly funded broadcasting, with reference made to the BBC and to ABC in Australia. Several quotations from Rupert and James Murdoch arguing for the BBC to be scaled back were given. In addition, examples of what the submission calls Rupert and James Murdoch's *"hostility"* to public subsidies for journalism are given.
- A2.84 [redacted] argued that the transaction would give the Murdoch Family Trust significant influence across the UK media sector, with double the income of the BBC. The submission also commented on the power of the Murdochs *"to influence politicians, civil servants and those responsible for public policy"*. The response suggested that the transaction would *"fully expand"* the Murdoch Family Trust's power in this respect.
- A2.85 Both [redacted] and the Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission referenced a statement given in 2012 to the Leveson Inquiry into the culture, ethics and practices of the press by Ed Richards, former Chief Executive of Ofcom, where he said that if Ofcom were to undertake a future public interest test, we should give equal weight to questions of political influence as to our assessment of media plurality.
- A2.86 60% of the people polled by YouGov on behalf of 38 Degrees felt that Rupert Murdoch currently has too much power and influence over British politics.

## A history of editorial interference

- A2.87 Professor Barnett provided examples of Rupert Murdoch and Fox's "*readiness for interference*" impacting on all genres of programming (not just news and current affairs), with clear implications for editorial independence, impartiality and accuracy. As examples of this, the submission cited what Professor Barnett saw as editorial interference following Rupert Murdoch's purchases of London Weekend Television and the Wall Street Journal.
- A2.88 Avaaz's submission provided various statements from people who have worked for media owned by Rupert Murdoch in an editorial capacity, which suggested that the publications and stations have not had full editorial independence, with Rupert Murdoch's personal influence evident over several decades.
- A2.89 The submission from Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer gave evidence of what it called "*Rupert Murdoch's history of strong editorial interventionism over news assets he controls*". It went into detail about how he appoints editors who will "*anticipate what he will want written*". Former editors of The Sun and The Sunday Times, and executives of News Corp and The Wall Street Journal, were cited on their engagement with Rupert Murdoch and how he influenced them. Examples were also given about how representatives of Rupert Murdoch were alleged to have pressurised reporters to change stories. The submission also gave examples of individual cases of alleged editorial interference from The Australian, The New York Post, The Times and The Sun.
- A2.90 The response argued that recent evidence exists of Rupert Murdoch personally supervising coverage of the Scottish independence referendum, the General Election 2015, the EU Referendum and the 2016 US presidential election. It argued that the fact that Rupert Murdoch is currently acting Chief Executive of Fox News suggests that "*this record of editorial interference and control is not limited to newspaper assets*". It said that, as newspaper circulation declines and influence wanes, there is "*every reason to believe that his interest will focus on his TV assets' – Fox News and, if this transaction is approved, Sky News*".
- A2.91 The submission stated that all of Rupert Murdoch's news assets display a marked editorial uniformity that conflicts with the fundamental objectives of plurality policy of "*ensuring there is a diversity in the viewpoints that are available and consumed, across and within media enterprises*". The example of unanimous support for the Iraq war by all of News Corp's newspapers across the world was given to illustrate this point. Further examples given included: The Sun, the Times and the News of the World always backing the same political parties at elections over the last 20 years, the disquiet at the Wall Street Journal over its support for Donald Trump and the changes that Rupert Murdoch has made to Fox News since being acting Chief Executive to ensure that it supported Donald Trump in the 2016 presidential election.

## Other plurality concerns

- A2.92 The Centre for Competition Policy, the Media Reform Coalition and the LSE Media Policy Project were concerned that Sky's growing power as an internet service provider would allow it to give preferential treatment to certain providers and applications by controlling traffic management.
- A2.93 ISBA was concerned that further consolidation would threaten choice in advertising sales or in plurality of editorial offerings. The submission argued, from the

perspective of advertisers, for the introduction of controls on media ownership, to protect the plurality of content provision. It said that advertisers need a diverse and pluralistic media sector so as “*not to be held ransom by an over dominant owner*”. ISBA said the transaction risks reducing both diversity and plurality, and said that a full inquiry by the Competition and Markets Authority would be necessary.

- A2.94 [X] said that the transaction might give Fox/Sky and News Corp further powers of cross-promotion and would enhance its ability to bundle content. [X] raised this issue specifically in relation to sport. It said that currently, news and current affairs excludes sport and therefore underestimates the impact sports coverage has on the ability to attract and retain audiences. [X] said that the transaction may concentrate the ownership of sports rights or encourage collaboration in the purchase of sports rights among companies operating under a single owner, thereby excluding independent news organisations from crucial areas such as sport. [X] argued that we should consider content rights (specifically relating to sport) or the creation of exclusive coverage rights between media outlets and sports organisations as part of our analysis of the transaction.
- A2.95 [X] said that the transaction would crowd out competitors from the news market, damaging the financial stability of those organisations and therefore reducing media plurality. In addition, [X] also highlighted the acquisition by Fox of Sky’s existing customer base, as well as the level of media influence in politics, as reasons to oppose the transaction.
- A2.96 [X] stated that the transaction would give Fox/Sky and News Corp increased capacity to advertise to consumers, further draining away advertising revenue from rival producers of print media. [X] said that this would threaten its business model and potentially reduce media plurality in the UK.
- A2.97 Professor Hardy was concerned that the transaction would lead to increased cross-promotional activity, which would be detrimental to plurality. He stated that News Corp’s cross-promotion warrants wider consideration, as coordinated intra-firm promotion risks “*locking in*” consumers not only to integrated products and services but to a restricted editorial environment. His submission argued that “*cross-promotion may be used to promote corporate or commercial interests in editorial at the expense of fairness to competitors’ or viewers’ interests. More broadly, cross-promotion may undermine editorial independence*”.

## **One detailed response was broadly in favour of the transaction**

- A2.98 ITV was broadly in favour of the transaction. It suggested the transaction could act as a prompt for forward-looking regulatory policy changes to accommodate the changing market. ITV said that such regulatory changes would enable ITV to maintain its financial commitment to news.

## **Main theme arising from detailed responses in relation to the broadcasting standards consideration**

### **Breaches of the Ofcom Broadcasting Code by Fox**

- A2.99 The Campaign for Press and Broadcasting Freedom summarised the seven breaches of the Broadcasting Code recorded against Fox News since 2013. The Campaign for Press and Broadcasting Freedom urged us to continue to hold Sky to rigorous standards were the transaction approved.

- A2.100 Avaaz's submission listed various sections of the Broadcasting Code and provided numerous examples of where it considers Fox News has failed to adhere to the Broadcasting Code (summarised below). It argued that there is a "*consistent pattern*" of abusive and hostile treatment of certain individuals and groups, misinformation, and partisanship. Avaaz said that these stories are often perpetuated by prominent political figures, and are rarely corrected by Fox either at the time or later. It argued that these types of behaviour would be likely to occur, in breach of the Broadcasting Code, were the transaction approved.
- A2.101 Regarding section 3 of the Broadcasting Code (relating to crime, disorder, hatred and abuse), Avaaz referred to what it considers to be a pattern of abusive and derogatory treatment of a range of individuals, groups, religions and communities by Fox News that has not been justified by the context of the broadcasts in question. It noted that Fox News has largely failed to adequately correct or respond to complaints of this nature. Examples were given such as Fox News' coverage of the 2017 Westminster attack, comments made by commentator Katie Hopkins about the mayor of London Sadiq Khan, and recent comments about Birmingham being "*totally Muslim*" and a place "*where non-Muslims simply don't go in*". It argued that such examples demonstrate that Fox is not genuinely committed to broadcasting standards.
- A2.102 Regarding section 5 of the Broadcasting Code (relating to due impartiality and due accuracy), Avaaz cited "*11 days of fact-free accusations against the leading candidate for the 2008 Democratic presidential nomination*" and stories regarding Barack Obama's religion and origin of birth. Links were drawn between Fox News agendas and newspapers owned by the Murdoch Family Trust, with Avaaz suggesting that Sky would likely be used in a similar way if the transaction were approved.
- A2.103 The submission argued that while the Broadcasting Code offers some protection in this area, the decision of what stories to broadcast is not covered by our impartiality rules, and Fox News is currently free to use its share of voice to turn "*a fringe story into a massive media circus*".
- A2.104 Regarding section 6 of the Broadcasting Code (relating to elections and referendums), Avaaz referred to what it considers to be Fox News' ability to influence election outcomes in the same manner as newspapers in the UK, giving the example of their support for the Republican party for the 2016 US election. Examples were listed in the UK of the similar agendas of News Corp titles regarding: Brexit, the General Election 2015 and the Iraq War. It was argued that Rupert Murdoch's use of US broadcast news combined with the UK newspapers gives a preview of what he may aim to achieve with Sky News in the UK.
- A2.105 The submission argued that if the transaction goes ahead, the members of the Murdoch Family Trust would be likely to attempt to dilute existing broadcasting standards in the UK, given their track record of attempting to influence rules and regulations in both the US and the UK.
- A2.106 [§] expressed concern with the coverage of Islam and attitudes towards Muslims as presented by Murdoch-owned news providers. It gave examples of what it considered to be factual inaccuracies, scaremongering and bias against the Muslim community from The Sun and The Times, which it believed were damaging to British society.

- A2.107 [X] noted that Fox News has on occasion repeated irresponsible stories about Muslims from The Sun, and on at least one occasion has repeated a story known to be inaccurate that has been corrected by The Sun itself.
- A2.108 A submission from CrowdNewsing raised concerns around the Murdoch Family Trust's involvement in the Indian broadcasting sector, specifically related to the conduct of Star India Private Ltd. (formerly Star News), an Indian media and entertainment company owned by Fox. It argued that Star News' attempted to "*shoehorn misogyny and entertainment into mainstream news*".
- A2.109 CrowdNewsing cited the programme Saas Bahu aur Saazish as a prominent example of such behaviour. According to CrowdNewsing, this programme recaps and reviews "*regressive soaps*" and is presented as a segment of the regular Star News service. Thus, the company conflates reviews of frequently misogynistic TV shows with actual news coverage, often without making any critical assessment as to the content of the programming. CrowdNewsing argued that such behaviour would breach section 5.11 of the Broadcasting Code which outlines that "*due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy*".
- A2.110 CrowdNewsing argued that Star News deliberately misrepresents news stories to play on the wider fears of its viewers. For example, it quoted senior journalists at Star News who stated that they "*had standing instructions to run breaking news tickers any time there was an incident of fire or even road accidents. We would then edit these disturbing visuals with dramatic audio tracks. The idea was to create 'stickiness' to ensure the viewer is hooked to the channel*".
- A2.111 They also noted the willingness of Star News to conflate factual news programming with sensationalist crime stories. The submission specifically referenced the programme Sansani, which it claimed is deliberately styled to present crime stories as genuine news articles, with emphasis on dramatic delivery.
- A2.112 Professor Hardy highlighted previous responses by Sky and Fox to our rulings of breaches of the Broadcasting Code regarding sponsorship and cross-promotion, and noted "*the poor level of engagement with the rules and regulatory system*". Three examples were provided of instances where the response by Sky or Fox either did not address all issues we had raised, or were "*unsatisfactory in supplying an explanation*".
- A2.113 Professor Barnett provided examples of Rupert Murdoch and Fox's readiness for 'interference' impacting on all genres of programming, not just news and current affairs, with clear implications for editorial independence, impartiality and accuracy. His submission said that Rupert Murdoch has "*demonstrated that he cannot be trusted to uphold the standards of impartiality and accuracy which are integral to the 2003 communications act and that the transaction by giving full unqualified control will not serve the public interest*".
- A2.114 [X] stated that "*the bid threatens the high standards of broadcasting in the UK*". She cited specifically the recent breach by Fox over so-called "*no-go areas*" for non-Muslims in Birmingham.
- A2.115 Robin Gill's submission suggested that Fox's standards do not meet the Broadcasting Code's requirements regarding due impartiality and accuracy and referenced links to articles about non-compliance.

- A2.116 Mr Gill felt that if the transaction went ahead, it would force the BBC to move “*down-market*” and become more populist in its news coverage to retain its audience.
- A2.117 Alaphia Zoyab was concerned that the Murdoch-controlled press is promoting Islamophobia and racism in the UK and internationally. Ms Zoyab cited several articles and reports which note the impact of the media in encouraging Islamophobia. Her response highlighted the response of Fox News to a recent terrorist attack and outlined fears that the transaction will lead to Sky News producing similar content, and that the Broadcasting Code is not sufficient to prevent such a change in style.
- A2.118 In YouGov’s opinion polling on behalf of 38 degrees, 55% of people said that if the potential transaction were to go ahead they would lose confidence that broadcasting was serving the public good. 54% felt that we would be failing to protect public confidence in broadcasting should the potential transaction go ahead.

### **Sky News could become more like Fox News in style, content and tone**

- A2.119 The Campaign for Press and Broadcasting Freedom was concerned that Fox would set out to make Sky News more like Fox News in style and tone.
- A2.120 It compared the current position of Sky, which it said was “*highly regarded in professional circles*”, with Rupert Murdoch’s previously reported views that “*Sky News would be more popular if it were more like Fox News*” and that only then would it be a “*proper alternative to the BBC*”.
- A2.121 [§]’s submission noted Rupert Murdoch’s statement to the House of Lords Communication Committee in 2007 that he would like Sky News to become more like Fox News. She argued that this would not be compatible with UK’s tradition of balance and impartiality in broadcasting.
- A2.122 The Campaign for Press and Broadcasting Freedom referred to two MacTaggart lectures given by Rupert Murdoch in 1989 and James Murdoch in 2007 and to Rupert Murdoch’s House of Lords committee appearance in 2009 in which he said that “*Sky News could become more like Fox News without a change to the impartiality rules in the UK*”. It argued that the way Rupert Murdoch would seek to achieve this would be, as Fox News does, in “*presenting current affairs on Sky not in conventional bulletins but in politically charged talkshows with a strongly opinionated host and a panel of like-minded experts or activists*”. It suggested that it would breach every clause in section 5 of the Broadcasting Code, which covers due impartiality and due accuracy.
- A2.123 The Campaign for Press and Broadcasting Freedom then set out its view of how Fox works in practice. For example, it said that: “*it is not a news channel, in the way Sky News has been, but a TV version of talk radio*”. It said that Fox News abandons the notion of a professional, impartial news service in favour of one explicitly shaped to be a “*strident mouthpiece for its owner’s political agenda*”. To support the view that Fox News confuses news and comment by amplifying false stories, it gave the recent example of Fox News’ guest commentator Andrew Napolitano saying that GCHQ had wiretapped Donald Trump on behalf of President Barack Obama during the 2016 presidential election campaign. Other examples were also given, such as a story broadcast on Fox News in 2015 that suggested that Birmingham was a “*no-go*” place for non-Muslims. The Campaign for Press and Broadcasting Freedom suggested that this kind of broadcasting conflicts with the requirement of broadcasters in the UK and Europe to provide impartial broadcast news.

- A2.124 The Campaign for Press and Broadcasting Freedom cited the example of Sky Australia, which has recently become 100% owned by News Corp. The Campaign for Press and Broadcasting Freedom said that, while Sky Australia's daytime rolling news is well-regarded for its accuracy and professionalism, the night-time schedule features a series of opinion-led programmes heavily populated with columnists from News Corp papers, often interviewing each other. Although the Campaign for Press and Broadcasting Freedom acknowledged that the format predated the takeover, they quoted an Australian columnist suggesting that Sky Australia's shift to full primetime opinion programming broadly follows the Fox News format in the US.
- A2.125 Avaaz also argued that the takeover of Sky Australia by the Murdochs in December 2016 provides a blueprint for turning Sky into Fox, with an apparent shift already in the peak time schedule to opinion-led content with a bias towards the right, with many of its hosts being News Corp columnists.

**Some respondents raised concerns around corporate governance and compliance, which we have also considered as part of our assessment of Sky's fitness and properness to hold broadcast licences**

- A2.126 Avaaz's submission raised concerns surrounding corporate governance and stated that although the Broadcasting Code does not set out relevant guidance, corporate governance is "*a key contextual factor in fulfilling the code*". It stated that Fox and News Corp have "*weak and ineffective boards incapable of holding the Murdochs to account to any meaningful standard*", and listed historical corporate governance failures that the Murdochs have been involved in which it said we should consider.
- A2.127 It pointed to Fox's track record in the USA and Australia as evidence that Fox would not comply with the Broadcasting Code, and would go further, "*to stretch, break, and then change the code to suit their agenda*". They also argued that the Murdoch family already have a "*disproportionate influence across all news platforms*", which is then picked up by TV news providers.
- A2.128 The submission drew attention to several recent examples of failures of corporate governance at Fox, which it said has continued since 2012, when a new corporate conduct system was put in place.
- A2.129 [X] indicated that he wanted to make sure that we considered the many issues of widespread wrongdoing and criminality within News Corporation around the phone hacking scandal, the corporate governance failures that allowed them to happen, and the continued involvement in Sky and Fox of many of the same people.
- A2.130 [X] outlined his concerns that the evidence that we would need to consider would not be available until after part two of the Leveson Inquiry is concluded. He cited our previous report on James Murdoch's conduct, as well as cases of phone hacking and the ongoing investigation by US authorities into payments to alleged victims of sexual harassment at Fox.
- A2.131 [X] argued that the corporate governance and accountability record of members of the Murdoch Family Trust are relevant to the Sky takeover because James Murdoch has been Chief Executive of Fox since 2015 and serves as a board member and Rupert Murdoch is currently Chairman and acting CEO of Fox News since July 2016 and is currently Executive Chairman of Fox.
- A2.132 [X] referred Ofcom to our 2012 fit and proper decision and said that it follows that Fox should not be permitted to acquire the remaining shares in Sky. It argued that

substantial new evidence has emerged since the 2012 fit and proper decision which showed a clear pattern of *“gross failures of corporate governance, management and accountability in companies controlled by the Murdoch Family Trust, throwing new light on the issues analysed by Ofcom in its 2012 report, and revealing more recent wrongdoings, including in the US”*.

- A2.133 The submission suggested considerations for analysing failures of corporate governance and accountability in relation to Rupert and James Murdoch. These included involvement in, direct or indirect, or active knowledge of, criminal or other wrongdoing, complicity in cover ups, and whether their corporate governance and accountability was of a level that makes them fit and proper to have the control and influence over a broadcast licence holder.
- A2.134 It also referred to *“attacks”*, through the media controlled by the Murdoch Family Trust, on investigating authorities and independent regulators which have the effect or are intended to have the effect of intimidating or otherwise influence the actions or approaches of those entities.
- A2.135 It argued that due to the decision to reappoint and maintain Rebekah Brooks as Chief Executive of News International and News Group Newspapers, it was necessary to apply the same tests to her conduct as to members of the Murdoch Family Trust, given the appointment implies the Murdoch Family Trust has judged her the most suitable person to run News International and News Group Newspapers and to oversee corporate governance there.
- A2.136 The submission presented what it described as *“New evidence on corporate governance failings since Ofcom’s previous report”*. It listed evidence from successful prosecutions of News International employees and police and public officials since the 2012 fit and proper decision. It listed new evidence relating to Mazher Mahmood, a former journalist at The News of the World and The Sunday Times, which it argued was particularly important because it *“demonstrates that criminality was more widespread in both time and titles than recognised by the Secretary of State in her 6 March 2017 letter to Fox and Sky”*.
- A2.137 It listed additional legal developments including News International admitting phone hacking at The News of the World in several hundred phone-hacking claims and payments to victims and lawyers in relation to these cases amounting to over \$600m, as well as a high court judge permitting civil claims to be made about hacking at The News of World features desk (beyond the staff and years covered by the Pinetree criminal investigation) and The Sun newspaper.
- A2.138 It also referred to what it called many *“revelations about corporate governance”* that have emerged since the 2012 fit and proper report, including the Privileges Committee report into the alleged contempt of Parliament, raising serious questions about the conduct and competence of News International chief executive Les Hinton. It referred to what it told us was a clandestine recording of Rupert Murdoch privately addressing journalists from The Sun, which it argued raised questions about whether the scandal had changed News Corp’s attitude to corporate governance and wrongdoing by its employees.
- A2.139 The submission also took issue with the re-hiring of Rebekah Brooks in mid-2015 after *“major doubts about her character and fitness to run a company were raised in court”*. It suggested that revelations of phone hacking indicated that Ms Brooks had been *“guilty of a gross failure of corporate governance”*. The submission concluded

by referencing part one of the Leveson Inquiry, and quoting extensively from Lord Justice Leveson's report.

- A2.140 The response from [REDACTED] highlighted previous cases of phone hacking at Murdoch-owned enterprises and referenced our previous assessment of James Murdoch's conduct as having fallen short of the behaviour expected of a chief executive. We also received material from two US based attorneys, Lisa Bloom and Douglas Wigdor, acting on behalf of current, and former, employees of Fox News who have current racial and/or sexual harassment claims against Fox News. We have considered this evidence as part of our fit and proper assessment.
- A2.141 We also received a submission from Mark Lewis, a media lawyer who represented victims of phone hacking at the News of the World.
- A2.142 We also received material from Color of Change, a US based online racial justice group relating to alleged racial harassment and discrimination against the BAME community by Fox News both on and off screen. We also received a response from UltraViolet, a women's rights organisation with material relating to alleged sexual harassment at Fox News. Their submission also contained a petition against sexual harassment at Fox signed by 71,000 people.

## Concerns relating to potential undertakings

### Rupert Murdoch's history means that we should be cautious about any pre-transaction approval assurances or undertakings

- A2.143 [REDACTED] said that no evidence can be considered regarding the proposed transaction apart from the context of Rupert Murdoch's record in the UK and abroad. He referenced historical cases starting with Rupert Murdoch's takeover of The Times in 1981 which exhibited his *"lack of respect for editorial independence as well as his willingness to trade "journalism of integrity for political favours"*. Mr Evans referred to Rupert Murdoch's promise to the board of The Times and the Secretary of State to preserve the political independence of The Times, *"one of many promises he broke within 12 months of the takeover"*. He also documented how the independent national directors at The Times were disregarded by News International on editorial decisions.
- A2.144 [REDACTED] argued that safeguards that the transaction could be contingent on are something politicians, regulators and policy makers have been *"doing for over half a century in their dealings with Rupert Murdoch, in assuming that rules and agreements can guarantee his future behaviour"*.
- A2.145 Avaaz's response argued that Rupert Murdoch has a *"habit of breaking promises about how news outlets will be run"*. It gives the example that soon after taking over The News of the World, Rupert Murdoch abandoned his pledge to run the paper with the Carr family, who had sold the paper to him after running it for 80 years. It mentioned Rupert Murdoch's promise that editors of The Times wouldn't be fired without the approval of the independent directors and his reported answer, *"God, you don't take all that seriously, do you?"*. Avaaz also said that in 2007, when Rupert Murdoch bought The Wall Street Journal, he promised the previous owners that he would maintain the paper's journalistic integrity. However, Avaaz argue that subsequently The Wall Street Journal has *"come under fire both inside and outside the newsroom for its rightward shift at the expense of transparency and objectivity"*.

- A2.146 Avaaz quoted Jonathan Aitken, a former Conservative MP, who once summarised this tendency in the House of Commons as follows: *“The plain fact is that Mr. Murdoch has strewn assurances and safeguards on newspaper and television ownership like confetti, all around the world, and that the more one examines those assurances the more one has to say that in far too many instances they have proved to be worthless”*.
- A2.147 The Ed Miliband, Ken Clarke, Sir Vince Cable and Lord Falconer submission also examined various examples of what it called Rupert Murdoch’s history of giving assurances when acquiring news assets are not subsequently upheld. Examples given included: the marginalisation of the Carr family following the acquisition of The News of the World; the shifting of the editorial stance of The New York Post; Rupert Murdoch’s renunciation of his Australian citizenship to acquire US citizenship; interference in editorial decisions at The Times and The Sunday Times; and interference with the editorial independence of the Wall Street Journal following take over by Rupert Murdoch. The submission suggested that these examples should lead us to be extremely sceptical of any assurances given by Fox in the context of this transaction, and that the history of how Sky News has been run is of limited use as a guide to how it would be run following any acquisition.

## Annex 3

# Methodology

A3.1 In our report, we draw upon a range of research and industry currencies. This annex outlines the core metrics and research used in the report, detailing their methodologies and the extent to which they are directly comparable. It begins with a summary overview, followed by a more detailed explanation of the key metrics we have used in the report.

## Industry currencies overview

Figure A3.1 Overview of industry currencies

Industry currency	Methodology	Main time period used	Age range and sample size	News definition	Reach definition
Television - BARB	Continuous panel. Uses a meter attached to all television sets in a panel home to measure viewing. Data is reported on a minute by minute basis.	Jan-Dec 2016	Age range: UK adults aged 16+ in homes with a television. Sample size: approx. 10,600 adults in 5,300 UK households on a continuous basis.	<i>News: national and international and current affairs: political/economical/social sub-genres provided by BARB.</i>	3+ consecutive minutes of viewing. Figures reported as a weekly average.
Radio - RAJAR	One-week self-completion diary – self reported measure.	Quarter 4 2016, 12-month weight.	102,799 UK adults aged 15+.	Radio listening overall.	5+ minutes of consecutive listening within a 15-minute period. Figures reported as a weekly average.
Newspapers - NRS	Face to face quantitative survey – self reported measure.	Jan-Dec 2016	28,006 GB respondents annually; aged 15+.	Self-reported measure – read the newspaper.	Average issue readership – using NRS 6- or 7-day estimate for UK-wide titles.
Newspapers - NRS PADD	NRS PADD – PC: Fusion of NRS print data with comScore PC website data.  NRS PADD – Digital: Responses to digital readership from the NRS survey are calibrated to match comScore published estimates from its Mobile Metrix data.	Jan-Dec 2016 NRS data; November 2016 comScore data.	Adults 15+.	NRS = self-reported measure – read the newspaper.  NRS PADD = self-reported measure and use of publisher websites.	NRS PADD – PC = weekly / monthly readership.  NRS PADD – digital = monthly readership only.
Newspapers - ABC	Independent audit of national newspaper circulation figures, based on sales (excludes free titles).	July-Dec 2016	n/a	n/a	n/a
Online – comScore MMX (desktop devices) and MMX Multi-Platform (mobile devices)	comScore census data; continuous panel of participants.	April 2017	MMX = 38,694,000 adults 18+  MMX Multi-Platform=	comScore <i>News/Information</i> category.	The percentage of the online population that visited the website or used the app.

			42,531,000 adults 18+.		Data reported monthly.
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## News Consumption Survey overview

A3.2 In addition to industry measures, we use Ofcom’s annual News Consumption Survey as a core data source, particularly for understanding consumption across different platforms. We focus on:

- 1.1.1 “Share of reference” metrics
- 1.1.2 Cross-platform news consumption
- 1.1.3 Number of sources used for news
- 1.1.4 Attitudes towards news providers

**Figure A3.2 Summary of Ofcom’s News Consumption Survey**

Survey	Methodology	Time period	Age range and sample size	News definition	Reach definition
Ofcom News Consumption Survey (NCS)	Face to face omnibus.	19 <sup>th</sup> October – 8 <sup>th</sup> November 2016	2,894 adults aged 16+, including Nations’ boosts.	News and current affairs in region/nation, across the UK and from around the world.	Use particular news source nowadays.

## Television news viewing - BARB

A3.3 For television viewing, we have used the official industry currency from the Broadcasters’ Audience Research Board (‘BARB’). BARB uses a continuous panel of approximately 5,300 UK homes and tracks television viewing among all people aged 4+ in these homes on a second by second basis using meters attached to every working television set in the home. Data is reported minute by minute.

A3.4 BARB viewing data can be analysed by programme genre. Programmes are categorised by broadcasters according to the genre classifications set by BARB. However, programme level data is only available from broadcasters who subscribe to report programme information, and there is no independent verification of the programme genre classifications. The Fox News channel does not report programme data to BARB and this means that only the entire channel’s output is reported in our analysis.

A3.5 The ‘News and weather’ genre contains five sub-genres – ‘news: national/international’; ‘news: regional’; ‘weather: national’; ‘weather: regional’ and ‘news: generic’. Analysis in this report is based on viewing of the sub-genre of ‘national/international news’. The other subgenres were excluded as we deemed them less relevant to an understanding of consumption of television national and international news.

A3.6 The current affairs genre contains the sub-genres of ‘*political/economical/social*’; ‘*consumer affairs*’; ‘*special events*’; ‘*magazine*’ and ‘*general*’. Where used in this report, analysis is based on the consumption of the ‘*political/economical/social*’ sub-genre.

- A3.7 In this report, analysis has been conducted on adults aged 16+. Reach (that is the proportion of the population with a television in their home who have consumed a defined number of minutes of national/international news programming in a given period) is based on anyone who has watched at least 3 consecutive minutes of the sub-genre in an average week. This is in line with the general industry practice. We decided to run the television news analysis on 3+ minutes due to the varying duration of news programmes (e.g. short news bulletins, hour long programmes or 24 hour channels).
- A3.8 Share of total time spent to the national/international news sub-genre by channel is also included in the television news analysis. All BARB subscriber channels were run against the genre and include any channel that provided national/international news programming in their programme logs. Where absolute time spent is used, data is expressed as total hours per adult per year.
- A3.9 There are a number of dedicated news channels that broadcast in the UK. These are not all individually measured or reported by BARB as they do not all subscribe to the audience measurement service. The viewing minutes they attract therefore cannot be allocated to the 'news' category. These channels include CNN, Bloomberg, CNBC and France 24.
- A3.10 For the channels that subscribe to BARB, a number do not report programme information and are also not included in viewing to the 'news' genre. These are largely international channels and include ARY News, GeoNews, Dunya News TV, Samaa, NDTV 24x7 and Fox News267.
- A3.11 We include analysis by wholesale provider groups alongside individual channel level data. The allocations used are showed in Figure A3.3.

**Figure A3.3 Retail and wholesale allocations for television channels**

Channel	Wholesale allocation
BBC One, BBC Two, BBC Four, BBC HD, BBC News, BBC Parliament, CBBC, CBeebies, BBC red button	BBC
ITV, ITV2, ITV3, ITV4, ITVBe, ITV Encore, CITV	ITN
Channel 4, E4, More4, 4seven, Film4, 4Music	ITN
Channel 5, 5*, 5USA, My5, Spike*	ITN
Sky News, Sky News Active, Sky1, Sky 2, Sky Atlantic, Sky Real Lives, Sky Real Lives 2, Real Lives, Sky Arts, Sky Arts 2, Sky Living, Sky Living Loves, Pick	Sky
Fox News	Fox
All other remaining channels	Others

Note: all channels include HD and +1 channel variants. Only channels that contained programme logs against the *national/international news* or *current affairs:political/economical/social* genres are included in data results.

<sup>267</sup>These six channels combined accounted for 2.7 hours of the 3.0 hours of viewing per adult in 2016. There were 16 dedicated news channels that we identified to be reported by BARB between 2010-2016; not all of them were necessarily all reporting during the period, i.e. some will have ceased reporting during the period and some began reporting partway through the period. In 2010, three of the 16 dedicated news channels reported viewing data (Fox News, Euronews and Sky News Active), with a total viewing time of 25.2 minutes per adult. Viewing time to the Fox News channel in 2016 was 21 minutes per adult.

Fox News analysis is based on the channel as a *whole* as it does not report programme data. Weekly reach to the channel will therefore be the same for the television news and television current affairs analyses.

## Radio news listening – RAJAR

- A3.12 For radio listening we have used the RAJAR industry currency. RAJAR interviews just over 100,000 adults aged 15+ over 50 weeks each year. The survey operates as a sweep, not a panel, which means that respondents only participate for one week. Respondents are asked to complete a one-week diary showing all the stations they listened to, for at least 5 minutes, recorded in quarter hour time blocks. Data is compiled and released on a quarterly basis. We have applied a 12-month weighting to the data to provide annualised figures.
- A3.13 RAJAR does not provide programme level detail or programme genres so we have used overall figures for listening to radio. In this report, reach is based on those listeners who say that they listen to 5 or more consecutive minutes of radio in the average week.
- A3.14 Figure A3.4 shows how we have analysed radio stations based on their wholesale and retail allocation of news. See Section 6 for further detail on radio wholesale allocation.

**Figure A3.4 Retail and wholesale allocations for radio**

Channel	Wholesale allocation	Retail allocation
Global	Global	Global
Bauer	Bauer	Bauer
Communicorp	Global	Global
Celador	Sky	Other commercial radio
Lincs	Sky	Other commercial radio
UKRD	Sky	Other commercial radio
Wireless Group	News Corp	News Corp

## Online – comScore (UKOM)

- A3.15 comScore is the organisation that delivers online audience measurement. It is endorsed by UKOM, the body that sets and governs the UK standard for the online industry. comScore uses a hybrid measurement approach to online audience measurement which consists of both panel and census data. The panel provides demographic and usage data from recruited respondents, who install metered software to their devices. Census data is collected from comScore ‘tags’, which media owners can apply to any digital properties they wish to include in this form of measurement. comScore ‘unifies’ these two data sets to produce a granular view of consumer behaviour.

- A3.16 There are a number of different products offered by comScore. In this report, 'MMX' (desktop-only) and 'MMX Multi-Platform' are used, the latter comprising audience data from desktop, smartphone and tablet data sources, unduplicated to create a multi-platform view of use (i.e. a single user may be recognised as visiting an entity on both their desktop and smartphone).
- A3.17 Digital properties are assigned to the comScore categories. The News / Information category has been used as the basis of our analysis in this report. However, this analysis may not capture all sites which could be relevant to the News / Information category but have not been assigned that way by the media owner. We also note that a category may also include larger properties or websites that may not be solely news-related (e.g. BBC Sites also capturing CBBC visits, or newspaper sites also capturing fantasy football visits). comScore as an independent arbiter has final say on categorisation of digital properties.
- A3.18 There can be a varying level of unification between the panel and census data, including where publishers have chosen not to tag all assets. For example, the Telegraph Media Group ('TMG') is fully unified when looking only at desktop data. However, the unification of mobile data is not currently possible for the TMG sites as only panel data is available and not census.
- A3.19 The report limits the analysis to the top 15 sites within the comScore News / Information category when looking at desktop-only data (MMX) and the top 5, plus Sky News and The Times when looking at the multiplatform data (MMX-MP) as these have the most comparable unification status. Although TMG is ranked within the top 5 for News across multiplatform, we are cautious to compare this directly with the other news entities, because the mobile data is not unified. For The Times, tablet data is panel only and not unified.
- A3.20 Throughout the report, we refer to a number of metrics, defined below:
- 3.20.1 Unique audience – the total number of unique persons who visited a specific website or used a specific application at least once in a given month. Persons visiting the same website more than once in the month are counted only once.
  - 3.20.2 Digital audience – the active audience across all platforms (laptop/desktop computers, mobile phones and tablets, for those websites that are tagged in comScore's census network).
  - 3.20.3 Active reach – the unique audience of a website as a proportion of the active audience.

## **Newspaper readership - National Readership Survey (NRS)**

- A3.21 Newspaper-specific analysis uses the industry currency – the National Readership Survey (NRS). This is a rolling face to face quantitative survey, interviewing over 28,000 respondents each year across Great Britain (i.e. not including Northern Ireland).
- A3.22 A respondent is deemed to have read a paper if they spent more than two minutes reading or looking at it. Average issue readership (AIR) is based on whether respondents say if they have read each title within the issue period of the title. For example, for daily newspapers respondents are asked whether they have read each daily paper in the last day. As most publications have more than one reader per

copy, the NRS readership estimate can be very different from the circulation count provided by ABC.<sup>268</sup>

A3.23 NRS provides data by title only. For the purposes of this report, we commissioned bespoke analysis in order to provide readership figures for the newspaper groups. We identified the individual titles to be included within each newspaper group net figures. Kantar Media supplied this data. The primary titles analysed in this report are those that are available on a UK-wide basis. The industry measure for readership of UK-wide daily newspapers is 6-day AIR, which includes Saturday editions. For this reason, the Metro and London Evening Standard are not included in the standard analysis in this report despite being measured on NRS as they only report 5-day AIR. This is also in line with ABC figures, which only report paid-for titles.

**Figure A3.5 Newspaper groups and titles**

	UK-wide* national daily titles	UK-wide* Sunday titles	Nations/ regional Sunday titles
News UK	<i>The Times</i>	<i>Sunday Times</i>	
	<i>The Sun</i>	<i>The Sun on Sunday</i>	
DMGT	<i>Daily Mail</i>	<i>Mail on Sunday</i>	
Trinity Mirror	<i>Daily Mirror / Daily Record</i>	<i>Sunday Mirror</i>	<i>Sunday Mail</i>
		<i>Sunday People</i>	
Northern & Shell	<i>Daily Express</i>	<i>Sunday Express</i>	
	<i>Daily Star</i>	<i>Daily Star on Sunday</i>	
Telegraph Media Group	<i>The Daily Telegraph</i>	<i>The Sunday Telegraph</i>	
Guardian Media Group	<i>The Guardian</i>	<i>The Observer</i>	

\*N.B. Newspaper title is available across the UK but NRS figures are GB only. Figures for The Sun incorporate The Scottish Sun. The Financial Times is not included in NRS measurement.

## Newspaper print and digital readership – NRS PADD

A3.24 The ‘NRS PADD’ measure incorporates estimates for desktop websites, and mobile and tablet devices. Due to the different ways that comScore collect their digital audience estimates, there are two separate methodologies – NRS PADD – PC and NRS PADD – Mobile

A3.25 The ‘NRS PADD – PC’ measure incorporates desktop online audience estimates in a fusion of NRS and comScore data. It includes monthly, weekly and (where

<sup>268</sup> The Audit Bureau of Circulation (ABC) provide audited data on the circulation (number of sold copies) of newspapers and magazines. We have generally used NRS data instead of ABC data in this report as we believe it provides a more useful indication of how many people consume a given news source.

applicable) daily reach for print titles and domains. In each PADD release, 12 months of print data is fused with the most recent month's data from comScore e.g. NRS data from Jan – Dec 2016 is fused with comScore's November 2016 data.

- A3.26 The fusion includes all domains linked to NRS print titles, either individual domains or portals. What is published is dependent on minimum sample sizes. For publisher websites, the minimum sample size is 40. This means that not all publisher websites will necessarily be published, and there will be some variance in the published lists.
- A3.27 The 'NRS PADD – Mobile' measure uses a different approach. Within the face to face interviews of the NRS survey, respondents are asked about which publisher brands they have read digitally and these data are then calibrated to match comScore published estimates of their multiplatform data. NRS PADD Mobile only includes monthly estimates.
- A3.28 Recall claims from the NRS questionnaire are very different from comScore and usually lower. NRS claims for mobile are adjusted to match comScore and deliver a single set of mobile estimates to the market. The procedure also ensures that duplication between PC and mobile estimates matches comScore.

### **Cross-platform research – News Consumption Survey**

- A3.29 In 2016, Ofcom's News Consumption Survey comprised a face to face omnibus among a representative sample of 2,894 adults across the UK, including sample boosts across the devolved nations.
- A3.30 Respondents are asked about their news consumption by way of an introduction of how they might use news throughout the day across a variety of platforms including social media. They are also given a definition of news as "news and current affairs in [nation], across the UK and around the world".
- A3.31 The survey provides respondents with approximately 150 codes for different potential sources for news, as well as the option to allow respondents to nominate their own sources which yields a further 700 or so additional sources, including regional sources. This gives us a bottom-up measure of what people consider they use for news (about their nation, the UK, and internationally) and will not necessarily include every possible outlet. The survey therefore provides a granular range of news sources. These individual news sources are then aggregated into various groups or 'nets' relating to their owner or publisher.
- A3.32 As part of the prompted list for online sources we include various social media and intermediary sources. However, we cannot tell from our survey which news brands people are using within these intermediaries.
- A3.33 Given the recall-based nature of the survey, it is possible that results may underestimate some online news consumption activity. It is likely to be harder for respondents to recall ad-hoc online news consumption compared to, say, the purchase of a newspaper or the watching of an evening television bulletin. We acknowledge the limits of such recall-based surveys. On the other hand, respondents show through such surveys what is resonant to them, and our figures focus on what people perceive to be their news consumption as distinct from e.g. entertainment.

A3.34 Our share of reference metric is calculated by asking people which news sources they use nowadays and the frequency with which they use them. Each reference is then factored according to frequency of consumption, and summed to create a total number of news references. The share (%) of each source or provider can then be calculated based on this total number.

A3.35 The report uses analysis by both wholesale news providers and retail providers. Figure A3.6 and Figure A3.7 provide details on how each source has been grouped. It is important to reiterate that these sources are the ones nominated by respondents, rather than an exhaustive list of all possible news sources.

**Figure A3.6 Sources included by retail news provider**

Retail news provider	Sources included
Bauer	Absolute Radio, Cool FM, Radio Borders, CFM, Radio City, City Talk, Clyde 1, Clyde 2, Downtown, Forth 1, Free Radio, Gem 106, Hallam, Key 103, Kiss, Magic, Metro, M.F.R., NorthSound 1, Radio Aire, Radio City, Rock FM, Tay FM, TFM, Wave 105, West Sound, Planet Rock, Viking FM, West FM, West Sound
BBC	BBC One, BBC Two, BBC Three, BBC Four, BBC Alba, BBC News channel, BBC Parliament, Teletext via BBC, BBC Radio 4/4 Extra, BBC Radio 3, BBC Radio 2, BBC Radio 1, 6 Music, BBC Asian Network, BBC Radio Five Live, BBC World Service, BBC Radio Scotland, BBC Cymru/Wales, BBC Radio Ulster, BBC website or app, BBC iPlayer, BBC local radio services
Channel 4	Channel 4, Channel 4 website or app
DMGT	Daily Mail, Metro, The Mail on Sunday, The Mail website or app, Metro website or app
Facebook	Facebook
Fox	Fox News, Star Plus
Global Radio	Classic FM, Real Radio, LBC, Heart, Capital FM, Smooth Radio, Gold, XFM, Radio X
Google	Google News (search engine just for news), YouTube, Google Finance, Google (general search engine)
Guardian Media Group	The Guardian, The Observer, The Guardian/Observer website or app
ITV	ITV1 / ITV Wales / STV / UTV, ITV2, ITV3, ITV website or app, STV website or app, UTV website or app,
Johnston Press	The i, The Scotsman, local press titles
Lebedev Foundation	London Evening Standard, The Independent website / app, London Evening Standard website / app
News Corp	The Sun, The Times, The Sun on Sunday, The Sunday Times, talkSPORT, Swansea Sound, The Wave, Wire FM, Signal 1, Wish FM, Signal 2, The Sun website or app, The Times\SundayTimes website or app, U105
Northern & Shell	Daily Star, Daily Express, Daily Star on Sunday, Sunday Express, Daily Star website or app, Daily Express website or app
Sky	Sky News, Sky1, Sky Sports, Sky Sports News, Sky Atlantic, Sky News website or app
Telegraph Media	The Daily Telegraph, The Sunday Telegraph, The Telegraph website or app, The Spectator
The Nikkei	Financial Times, Financial Times website or app
Trinity Mirror	Daily Mirror, Sunday Mirror, Daily Record, The People, Mirror website/app, local press print titles, local press websites
Twitter	Twitter
Viacom/C5	Channel 5
Other intermediaries	Yahoo news, MSN news, AOL news, Feedly app, Flipboard app, News Now website or app, Bing, Yahoo, Bing News, AOL, MSN, Safari
Other	S4C, non-specific/other local print titles, foreign language sources (TV and web), other international sources, other commercial radio, local TV channels, other TV news channels, other TV non-news channels, local authority sources, community sources, Republic of Ireland sources, weather websites, Apple news, blogs, Instagram, magazines, other web sources, other app sources

**Figure A3.7 Sources included by wholesale news provider**

Wholesale news provider	Sources included
Bauer	Absolute Radio, Cool FM, Radio Borders, CFM, Radio City, City Talk, Clyde 1, Clyde 2, Downtown, Forth 1, Free Radio, Gem 106, Hallam, Key 103, Kiss, Magic, Metro, M.F.R., NorthSound 1, Radio Aire, Radio City, Rock FM, Tay FM, TFM, Wave 105, West Sound, Planet Rock, Viking FM, West FM, West Sound
BBC	BBC One, BBC Two, BBC Three, BBC Four, BBC Alba, S4C, BBC News Channel, BBC Parliament, Teletext via BBC, BBC Radio 4/4 Extra, BBC Radio 3, BBC Radio 2, BBC Radio 1, 6 Music, BBC Asian Network, BBC Radio Five Live, BBC World Service, BBC Radio Scotland, BBC Cymru/Wales, BBC Radio Ulster, BBC website or app, BBC iPlayer, BBC local radio services
DMGT	Daily Mail, Metro, The Mail on Sunday, The Mail website or app, Metro website or app
Fox	Fox News, Star Plus
Global Radio	Classic FM, Real Radio, LBC, Heart, Capital FM, Smooth Radio, Gold, XFM, Radio X
Google	Google News (search engine just for news), YouTube, Google Finance
Guardian Media Group	The Guardian, The Observer, The Guardian/Observer website or app
ITN	ITV1 / ITV Wales / STV / UTV, Channel 4, Channel 5, ITV2, ITV3, ITV or ITN website or app, STV website or app, UTV website or app, Channel 4 website or app
Johnston Press	The i, The Scotsman, local press titles
Lebedev Foundation	London Evening Standard, The Independent website / app, London Evening Standard website / app
News Corp	The Sun, The Times, The Sun on Sunday, The Sunday Times, talkSPORT, Swansea Sound, The Wave, Wire FM, Signal 1, Wish FM, Signal 2, The Sun website or app, The Times/Sunday Times website or app, U105
Northern & Shell	Daily Star, Daily Express, Daily Star on Sunday, Sunday Express, Daily Star website or app, Daily Express website or app
Sky	Sky News, Sky1, Sky Sports, Sky Sports News, Sky Atlantic, Compass, Lincs FM, Trax, 2BR, Ridings FM, KLFM, Minster FM, Dream 100, North Norfolk Radio, Sam FM, Spire FM, The Beach, Eagle FM, Sky News website or app
Telegraph Media	The Daily Telegraph, The Sunday Telegraph, The Telegraph website or app, The Spectator
Nikkei	Financial Times, Financial Times website or app
Trinity Mirror	Daily Mirror, Sunday Mirror, Daily Record, The People, Mirror website/app, local press print titles, local press websites
Other intermediaries	Yahoo news, MSN news, AOL news, Feedly app, Flipboard app, News Now website or app, Bing, Yahoo, Bing News, AOL, MSN, Safari
Other	S4C, non-specific/other local print titles, foreign language sources (TV and web), other international sources, other commercial radio, local TV channels, other TV news channels, other TV non-news channels, local authority sources, community sources, Republic of Ireland sources, weather websites, Apple news, blogs, Instagram, magazines, other web sources, other app sources