

CPBF Submission to Ofcom Consultation on Media Plurality Framework (May 2015)

1. ABOUT THE CPBF

The Campaign for Press and Broadcasting Freedom (CPBF) is a leading independent organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership-based, drawing its support from individuals, trade unions, cultural and civil society organisations. Since it was established, the CPBF has consistently advocated policies designed to encourage a more pluralistic media, and has regularly intervened in public and political debates over the future of media across the United Kingdom.

2. Response

We have set out our proposals on media plurality in previous submissions to Consultations by DCMS, Ofcom and Communications Committees of the House of Lords and Commons. We offer a summary of points that are most relevant to this consultation. We then confine our response to the consultation question concerning contextual factors.

3. Scope of plurality measurement

We recognise that Ofcom is now operating within the terms set by the DCMS, albeit ones it has largely endorsed in previous reports. However, we do not accept the shrinking of plurality concerns, measurement and action, to news media and also do not consider this approach is either adequate or sustainable to address the challenges of on-going media convergence.

The scope to influence political opinion formation and public opinion makes the control of news and current affairs information and discussion the most important area of concern. However, media pluralism is much broader than this. It includes the diversity of content, share of voice and quality of access to ideas, information, imagery and opinions. The regulation of media plurality must not be restricted to news media but encompass all media services that are public facing and which provide content services to large aggregated audiences.

4. Democratic involvement

We favour an approach that combines the rigorous application of specific measures, in particular ownership and market share (availability, consumption), with scope to apply a broader range of plurality criteria and considerations as set out in new legislation. The measurement framework should include quantitative metric and qualitative metrics including assessments of impact and what Ofcom calls 'contextual factors'. We favour a discretionary approach that involves Ofcom selecting and justifying appropriate measures. This process should be informed by effective public consultation and democratic oversight. Deciding whether there is too much media concentration, or insufficient cultural diversity, in media serving

audiences within any part of the United Kingdom should be fully open to public opinion, consultation and deliberation. It is right that judgements are properly informed by evidence derived from metrics but there must be scope to engage in wider debate with civil society, academics, politicians, and publics served. This is especially important in regard to the 'contextual factors', but also in assessing the development and application of all metrics in relation to the outcomes of action on media plurality. The nations of the UK through their elected assemblies should be granted greater powers over the regulation of the media within their remit including media plurality. Above all, we believe that determining what is in the public interest must be achieved through effective democratic participation, as proposed in our revised public interest test.

5. Media Plurality Reform

The CPBF proposes that the 'Public Interest' (PI) test, established by the Communications Act 2003, should be revised and extended. We regard the test as one important means of helping to secure media pluralism across converging media, and extend PI obligations to commercial media firms that have a significant reach and influence. Firms with significant market share should help ensure media plurality themselves by adhering to agreed standards, such as protecting journalistic independence and editorial output. But for assured plurality we are proposing ownership caps across the total media market and markets for national and regional news in different media, set at 20 or 30 per cent maximum share.

Any news publisher with a 15 per cent share in a designated market should be subject to a Public Interest test in respect of any merger or takeover. Ownership concentration above the 15 per cent threshold may be permitted if publishers meet standards (set by a combination of statutory, co- and self-regulation as appropriate to the industry) and meet certain public interest obligations, such as investment in newsgathering or original programming, upholding codes of practice, and protecting editorial independence. The local press, particularly, should be considered a community asset. As such, if a title's closure is threatened, a moratorium should be placed to allow for others, such as employee cooperatives or third sector groups, to bid to take it over as a going concern. Charity law should be amended to allow newspapers to become charitable trading companies.

We call on Parliament to

- Limit the power of ministers to override curbs on media concentration
- Impose public service duties on large media groups
- Strengthen the public interest test for media mergers
- Give the regulator Ofcom stronger powers to tackle media concentration and launch periodic reviews of media plurality. Ofcom itself must be made more accountable to the public.

6. Do you agree with the use of contextual factors as part of the framework?

Yes. We agree that contextual factors are an integral not a supplementary part of the measurement framework. The factors identified should all be included in the assessment of plurality and we agree that this should serve as an indicative not definitive list. However we would go further and regard the matters listed as ‘contextual factors’ to be integral to both measurement of plurality and action on plurality.

Our proposals for media plurality recognise that ownership, management, governance arrangements and adherence to regulations are critical factors in determining how media organisations should be treated. We believe that the framework of media plurality measurement and action is an important framework for the regulation of 21st century media. What is listed as contextual factors includes a range of different aspects, all very important, that need to be distinguished.

- There are factors that concern what kind of organisation is providing media services. Here we have argued that the BBC and public service media require special consideration and separate treatment.
- There are factors that concern the nature of adherence to relevant regulatory arrangements. Here we believe that the regulation of media plurality should be closely integrated and responsive, in regard to action taken, to the adherence of firms to statutory, co-regulatory and self-regulatory arrangements.
- There are factors that concern management, internal pluralism; editorial independence and the support and safeguarding of editorial and creative practices, including trade union recognition, workplace rights and conditions of work.
- There are factors that concern internal and external influences on the behaviour of firms, content and services. These include the influence of corporate owners, shareholders and investors, and the influence of advertising/marketing communications interests as funders, content providers and co-producers.
- Finally there are factors that concern the market and operational environments in which services are provided and used.

We see the organisation, financing and governance arrangements of firms as crucial metrics for assessing plurality, but also as crucial factors in determining action and remedies.

The existing Public Interest test provides grounds for intervention in media mergers on behalf of considerations including:

- Accurate presentation of news (newspapers).
- Free expression of opinion (newspapers).
- A sufficient plurality of persons controlling media enterprises serving an audience (broadcasting).

- The need for a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests (broadcasting).
- The need for persons carrying on media 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 (broadcasting).

This list needs to be expanded and updated for convergent media. Criteria for the PI test and remedies should include:

- source diversity
- content diversity
- freedom of expression (including protection for editorial freedom)
- transparency (disclosure of corporate and commercial communications interests)
- fair dealing
- adherence to standards (i.e. relevant self-regulatory codes; compliance with relevant rules and law)
- application of the fit and proper person test.

The CPBF argues that commercial providers with a significant share of media markets should meet public interest obligations. These, depending on market share and service, range from adherence to industry-agreed codes, to protection for editors and content producers, through to requirements to invest in newsgathering or original production. Rather than shrink the space for public service media, we need public interest obligations as a condition for all media providers who hold significant market share. The means to achieve this are combination of periodic plurality reviews and a strengthened public interest test, but public service media require special consideration and separate treatment.

The BBC should be included in market analysis, but the BBC should not be included in plurality enforcement measures, since their purpose is to secure plurality beyond the public service media themselves. The commercially funded PSBs, ITV and Channel Five have weaker public service obligations, and should be subject to ownership caps but they too (and the public trust Channel Four even more so) should also be granted special consideration as public service media. Public service media are required to meet standards of internal pluralism in editorial content, beyond impartiality in news and opinion. The combination of such service requirements and their systems of governance and oversight are not replicated across purely commercial media. Moreover, the periodic authorisation and review of public service media provide more suitable mechanisms to assess and sustain ‘internal pluralism’, both within individual suppliers and across the public service system as a whole. This is not an argument for uncritical endorsement: how the BBC performs on every criterion, and spends our licence fee, matters. Rather it is an argument that plurality mechanisms, which are designed to tackle concentration in commercial media, are not appropriate tools for PSB governance. Above all, the pluralism obtained by public service media should not serve as grounds to diminish plurality across commercial media.

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