

## **Response of the Newspaper Society to Ofcom's invitation to comment on measuring plurality across media**

The Newspaper Society represents the regional newspaper industry. The regional media companies in membership of the NS publish around 1200 local and regional newspaper titles, with 1600 associated websites, 400 niche and ultra local titles and own 26 local radio stations.

Local newspaper businesses continue to evolve into local media businesses delivering local news and information across print, online, mobile and broadcast platforms. Britain's local media comprises 1,200 core newspapers, 1,600 websites, hundreds of niche and ultra local publications and a range of other digital and broadcast channels including 26 local radio stations. The industry employs over 30,000 people, with a third ( 10,000) in editorial roles.

Local publishers are reaching new and growing audiences across a range of platforms and a variety of distribution methods – print, digital, part-paid, part-free – as they develop strategies to meet consumer demand for local news and information at a time and place that suits them. There have been launches of new local newspaper titles, not just the past closures noted by Ofcom. Audited website traffic figures are also available for many of the sector's flagship sites and are released alongside print figures.

The local press remains the most trusted source of local news and that trust translates to the industry's digital extensions. The investment in new platforms, special interest and ultra local publications, converged multimedia newsrooms, video journalism, UGC, mobile sites, Smartphone apps and other digital and print innovations means that local newspapers are now reaching more of the population than ever before as well as attracting new online advertising revenues. While print still accounts for around 90% of total revenues, digital revenues represent a significant and growing proportion.

As Ofcom is aware, the NS and regional media industry has consistently advocated deregulation of the media ownership regime at local level, not least because local newspaper transfers and mergers have barely raised plurality concerns, let alone triggered refusals or restrictions under the public interest or other plurality tests prescribed by media ownership controls, before or after the Communications Act 2003. The industry's stance has been that local media transfers and mergers should be governed by competition law alone and that the current competition authorities must radically reform their approach to media transactions. If the OFT and Competition Commission are to be merged and reformed, then detailed consideration will also then have to be given to the way that the new authority will deal with local media mergers and transfers, to ensure fast, inexpensive and clear guidance, process and decision-making in respect of both references and final decision, with reference to the realities of local media markets and the range and intensity of competition with which local media companies contend. A change in approach of the current authorities is still necessary to ensure the regime allows local media companies to

sustain and develop their businesses, supporting and improving the editorial and commercial services and benefits which they provide to their local communities.

We welcomed the abolition of local cross-media ownership restrictions earlier this year. We welcomed the Communications Act's abolition of the FTA's criminal sanctions and mandatory requirement for prior ministerial consent to newspaper title transfers and company mergers, usually only obtainable after reference to the competition authorities. However, this has not led to the facilitation of local newspaper transactions, even if they are or could have been beneficial to local media companies, advertisers and audience alike, not least where they might have achieved better assurance of the survival of the titles concerned.

We had hoped that the OFT's review of the local and regional media merger regime in 2009 and the introduction of Ofcom's local media assessment would finally ensure that the OFT recognised the realities of the fierce competition faced by local and regional newspapers in their local markets and that the OFT would adopt a less cautious and more realistic approach to local media companies' transactions, without necessitating their reference to the Competition Commission.

However, the industry has been disturbed by the OFT's first local media decision after that review, as the OFT decided that it had to be cautious and refer the anticipated acquisition by Kent Messenger Group (KMG) of several newspapers from Northcliffe Media Limited to the Competition Commission for further investigation on competition grounds. This has led to the parties' reluctance to proceed, not least due to the disproportionate costs of any reference, whatever the outcome. It has also had a chilling effect upon other regional media transactions, which might have prevented closure of local titles

<http://www.holdthefrontpage.co.uk/2011/news/trinity-mirror-we-tried-to-sell-closure-threatened->

[titles/?utm\\_source=emailhosts&utm\\_medium=email&utm\\_campaign=Nov18Mailout](http://www.holdthefrontpage.co.uk/2011/news/trinity-mirror-we-tried-to-sell-closure-threatened-titles/?utm_source=emailhosts&utm_medium=email&utm_campaign=Nov18Mailout) and affected regional media companies' consideration of strategies and options which might help them weather the current economic climate and assist their adaptation to the industry's structural changes.

The Newspaper Society's major concern is that Ofcom's advice on media plurality to the Secretary of State and the Leveson Inquiry should not lead to new and unnecessary plurality restraints upon regional media companies' development of their print, cross-media or digital businesses. It is vital that its potential application and effects upon local media are considered and evaluated. Ownership of regional media companies and the local press is still far more diverse than other 'traditional media' such as television and regional newspaper publishers' investment in local journalism for dissemination across any media platform is unique. It would be damaging to the industry if the Secretary of State were advised to introduce new controls, investigation and enforcement mechanisms through concern about UK dominance, which actually yet again had the greatest impact upon the regional media and led to unnecessary restrictions and time consuming costly procedures which stifle the development of the local and regional media.

Additional problems could be created if complex new plurality investigations and controls could be triggered not just by acquisitions, but by organic growth, within any

locality or region of the United Kingdom. It would be detrimental to the regional and local press if plurality investigations could be instigated as a result of a local or regional newspaper publisher's greater investment in journalism, or re-organisation or re-location of parts of its editorial operation, or its launch of some new local title or hyper local website or experimental interest in local television (with investment from the BBC or other local media company) or the popularity of its new online services, or conversion of a daily title to a weekly title or similar change. All these might lead to rises in sales, audience or revenue, within or without the publisher's newspaper titles' core circulation area, but within whatever town or area of countryside that the competition authorities might dub a 'substantial part of the UK' or plurality measurement advocated. It would be equally worrying if any measurement adopted meant that a local media company was at risk of a plurality investigation triggered by a competitor's decision to close a free newspaper title or withdraw an online news service, or reduce its local broadcasting holdings in the area.

Obviously, any interaction of a new plurality investigation with the existing media mergers and acquisitions regime would also have to be considered if the different systems had to co-exist – would this add yet more delay, complexity, cost and legal and business uncertainty to prevent or deter otherwise unobjectionable transactions or business developments?

We raise these concerns because past attempts at defining plurality and proposing new controls over media concentration were aimed at international companies' wide ranging media interests, yet would have inhibited local media companies activities. Leaving aside past extremes, such as calls from the European Parliament for outlawing profit from news dissemination, the European Commission's proposals published just after the UK's Broadcasting Act 1996 would have reversed the UK's liberalisation of the local cross-media ownership rules in that legislation, had the Commission not been persuaded of their unworkability. A decade and a half later, the European Newspaper Publishers Association still has to remind the Commission of the limits upon its legislative competence and dangers of its regulatory ambitions restricting the successful commercial media companies which actually invest in journalism and contribute to the plurality which the European legislature is so keen to encourage and protect. I attach ENPA's submission.

### **Approach to Advice**

**Plurality and regulation:** It will be helpful for Ofcom to describe what it is meant by plurality and how the current regulation is interpreted and applied. We trust that Ofcom will discuss and consult the media industry and media organizations, as well as regulators and commentators in considering these key issues.

**Market Evolution and Audience:** Given the myriad sources of information and news, we hope that Ofcom will be taking a broad approach to the definition of news, sources and channels in order to frame its definitions. We would be happy to facilitate any consideration of the regional and local media, including both daily and weekly newspaper publishers and publications across media.

**Policy Research:** For the reasons outlined above, Ofcom may find it useful to consult any regional and local newspaper companies which were willing to discuss their

experience of the application of the current and past regulatory framework, intended to protect plurality and competition, and the problems encountered including any effect upon their own business strategy or wider impact upon the local and regional media. The NS would be willing to discuss this issue further in more general terms.

### **Questions for Comment**

Our major concern is that the regional and local media, despite its diverse ownership in comparison with other traditional media, should not become the focus of new plurality triggers, investigations, reviews, reports and restraints, simply because of its unique investment in journalism and its defining characteristic and fundamental purpose of reflecting and reporting the geographic locality in which it is based.

### **What are the options for measuring media plurality across platforms? What do you recommend is the best approach? Is it practical or advisable to set absolute limits on news market share?**

As outlined above, regional and local newspaper mergers and transfers and their impact upon plurality, editorial independence and public interest have been minutely examined for decades, with no adverse findings. The abolition of local cross-media ownership rules was justified by reference to the proliferation of local news and information sources and has not resulted in any plurality or other public interest problems. Given the huge range of news and information sources and outlets - local, regional, national and international, public service, commercial, private - now available to, by and from anyone in print, online, broadcast or otherwise via traditional, new and social media, new local and regional plurality safeguards would appear to be unnecessary.

It is important that Ofcom's approach and recommendations do not result in the introduction of new plurality tests which will catch and adversely affect regional and local media and their development of their content and services across any media platform.

We also fear that the questions for comment could all too easily then elide into proposals for new regulatory controls or government oversight of regional and local media companies, publishers, journalists, journalism and other content in ways inimical to press freedom and press independence.

Freedom of expression and an independent free press are fundamental to democracy. Newspapers should not be subject to special statutory or co-regulatory press controls, over and above the general law, nor restrained by broadcasting controls such as impartiality requirements. (We have no objection to deregulation of broadcasting content controls.) The NS and the regional press are wholly opposed to any state licensing of journalists, editors, publishers or publications, statutory press tribunals or new statutory or co-regulatory controls over newspaper content, in print or online, or any extension of broadcasting content controls to online or print journalism or other content. The civil and criminal law already place myriad constraints upon investigation, newsgathering, reporting and publication by commercial regional and local newspaper companies across any media platforms, including online and press.

The Newspaper Society and the regional press support voluntary press self-regulation in respect of their titles, in print and online, including observation of the Editors' Code, as upheld by the Press Complaints Commission. The NS will engage in any review undertaken of the self-regulatory system and any resulting reform.

It is important that 'plurality' measures do not lead to new controls over the content published by regional newspaper companies or readers' and audience contributions, exchanges and interactions, irrespective of the media platform or form in which the content is disseminated or otherwise made available.

**What could trigger a review of plurality in the absence of a merger, how might this be monitored and by whom?**

The introduction of plurality monitoring and review at local and regional level could give rise to wholly unnecessary, burdensome and costly investigations which would damage and inhibit commercial media companies, which were simply successfully and lawfully sustaining, expanding or developing their businesses and/or activities - whether business related or pro bono initiatives of benefit to the community. It is vital that Ofcom avoid the creation of any such problems.

**Could or should a framework for measuring levels of plurality include websites and if so which ones? Whether or how should it include the BBC?**

The NS would also be happy to discuss the industry's continued concerns about the BBC's freedom to expand and develop its licence fee funded activities, online and otherwise, without effective restraints, policing and enforcement, which can operate to the detriment of the local and regional independent commercial media. It would seem untenable to exclude the BBC from plurality measurements pertinent to plurality evaluations of other media organisations, or thereby allow the BBC even greater freedom to pursue its licence fee funded and commercial activities, whilst imposing yet more restraints upon its commercial competitors at national, regional and local level.

The NS would of course be happy for Ofcom to refer to Ofcom's own past work in the preparation of research, reports, consultations, or decisions relevant to the regional and local media which also involved the NS and any discussions between the NS and Ofcom in the course of that work, including the market impact work relevant to the BBC Local public value test, OFT review of local and regional media merger regime and local media assessments.

Please let us know if you would like us to facilitate any visits, meetings or discussions with the regional and local media industry in order to assist your research on newsgathering or any other matter relating to the consultation. The NS would also be happy to discuss any matters in more detail, since the issues raised by the Secretary of State and Ofcom's consultation raise complex matters of principle, regulatory policy, definition, interpretation, application, process, practical operation of importance to the regional media industry

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