

RESPONSE TO OFCOM'S CONSULTATION ON ITS PROPOSED ADVICE TO THE SECRETARY OF STATE ON A MEASUREMENT FRAMEWORK FOR MEDIA PLURALITY

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 Twenty-First Century Fox, Inc (**21st Century Fox**) is a diversified global media company with interests in four main industry segments: cable network programming; filmed entertainment; television; and direct broadcast satellite television. In addition to a global portfolio of cable and broadcasting networks and properties including FOX, Fox International Channels, National Geographic and STAR; film studio Twentieth Century Fox Film; and television production studios Twentieth Century Fox Television and Endemol Shine Group. 21st Century Fox also holds equity interests in BSkyB and Tata Sky, which provide audio-visual content to millions of subscribers through pay-TV services in Europe and Asia respectively. 21st Century Fox employs nearly 6,500 people in its wholly-owned businesses across Europe, the Middle East and Africa, and tens of thousands more through those in which it has an equity stake.
- 1.2 21st Century Fox welcomes the opportunity to contribute further to Ofcom's work in developing a framework to measure the plurality of the media in the UK, by responding to Ofcom's consultation dated 11 March 2015 on its proposed advice to the Secretary of State for Culture, Media and Sport on a measurement framework for media plurality. This response builds on some of the points 21st Century Fox made in its reply dated 4 December 2014 to Ofcom's call for inputs in the initial phase of the current work; as well as on submissions made to the Department for Culture, Media and Sport's (**DCMS**) consultation on media ownership and plurality in October 2013 and (as News Corporation) to Ofcom's consultation on measuring plurality across media in November 2011, to the House of Commons Culture, Media and Sport Committee's inquiry into media plurality in January 2012, and to the House of Lords Select Committee on Communications' inquiry into media plurality in May 2013.
- 1.3 In summary, 21st Century Fox's views on the issues raised by the current consultation are as follows:
- (i) **Use of share of consumption**: 21st Century Fox does not share Ofcom's view that share of consumption is a "good proxy" for influence. While the use of share metrics may be inevitable in a measurement framework, it is vital to appreciate their limitations.
 - (ii) **Share of references**: 21st Century Fox notes Ofcom's view that "share of references" is preferable to other ways of measuring share. While 21st Century Fox accepts that "share of references" may have certain merits and could be seen as a "least bad" option, it is important to acknowledge that it remains subject to the limits that apply to measuring shares as a way of understanding plurality. It is also important that Ofcom consults fully on the design of any survey used in the measurement framework, and recognises that the share of references approach will in any event consistently understate the true degree of plurality in the UK media.
 - (iii) **Wholesale level**: 21st Century Fox disagrees with Ofcom's proposal to consider plurality at wholesale level, which is both unnecessary and arguably inconsistent with the existing statutory framework for plurality intervention in merger cases. More specifically, 21st Century Fox believes it would be an error to ignore the diversity in news on commercial radio simply because Sky News Radio wholesales content to many stations.

- (iv) **Contextual factors:** 21st Century Fox welcomes Ofcom’s inclusion of contextual factors in the measurement framework, but believes further work will be required to ensure all relevant contextual factors are captured and given due weight without allowing the framework to be used in an opaque or arbitrary fashion. 21st Century Fox notes that Ofcom’s consultation paper appears not to recognise a number of important contextual factors that are eroding proprietorial influence.

2. PRELIMINARY COMMENTS

- 2.1 Before responding to the specific questions raised in Ofcom’s current consultation, 21st Century Fox would like to make some preliminary observations regarding four points that inform the answers to those questions: (i) the limited value of share of consumption as a proxy for influence; (ii) the difficulties involved in examining plurality at wholesale level; (iii) the need to consider availability as well as consumption; and (iv) the importance of predictability in the functioning of the measurement framework.

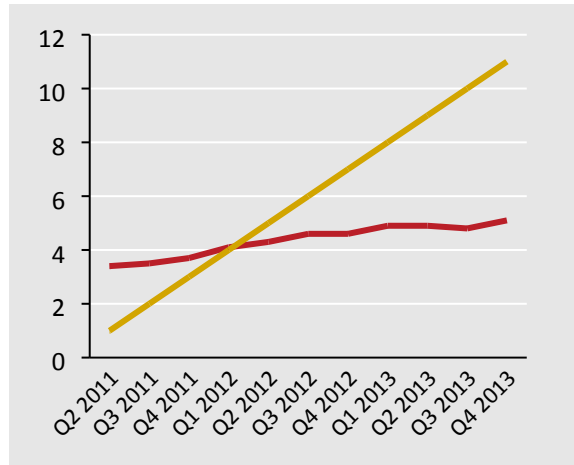
i. Share of consumption as a proxy for influence

- 2.2 Ofcom states in its consultation document that “*share of consumption is a good proxy for measuring the ability to influence in the news media market and reach and multi-sourcing are good proxies for the diversity of viewpoints consumed*”.¹ There are numerous problems with this statement.

- (i) Ofcom’s view that share of consumption is a good proxy for influence implicitly assumes that the influence of proprietors is fixed; and the consultation document fails to recognise that this may change over time. Since plurality regulations are about media control and ownership, what matters, insofar as a plurality assessment is considering influence, is the influence of the controlling entity on audiences, as mediated by the outlets it controls. If (for example) the ability of controlling entities or owners to dictate the stories consumed by readers of their outlets is falling, then the influence of controlling entities and owners is falling *even if the share of consumption of those outlets is unchanged*.
- (ii) In reality market changes have indeed been greatly reducing the influence of owners and controlling entities. Multi-sourcing is one factor. The consultation document relegates multi-sourcing to the somewhat circular statement that it is a proxy for the diversity of viewpoints consumed, but in fact it is an important reason why share of consumption *cannot* be assumed to be a good proxy for influence.
- (iii) Increasingly consumers are exposed to multiple sources, meaning that each individual source is likely to be less influential. Mediatique, in a report for the BBC, found that from mid-2011 to end 2013, the number of sources used by those online rose from 3.4 to 5.1.

¹ At paragraph 4.5

Figure 1: Online news sources visited per month²



Even this understates the impact – the underlying figures from Comscore are for computer use only, and exclude mobile devices. Given the rapid increase in smartphone and tablet adoption, the true level of online multi-sourcing is likely appreciably higher.

- (iv) Thus audiences see multiple news agendas, and various takes on the same story. Indeed, they frequently consciously cross-check what they hear. For instance, according to the same Mediatique report more than 50% say they visit the BBC online to “*check whether something I’ve heard is true*”.

Kellie Riordan, of the Reuters Institute, reports:

“The BBC’s director of news, James Harding, says the audience is now part of the news team because they too are distributing and sharing the news. “The world is one big fact-checking machine. It’s very healthy for the BBC’s journalism” ”³

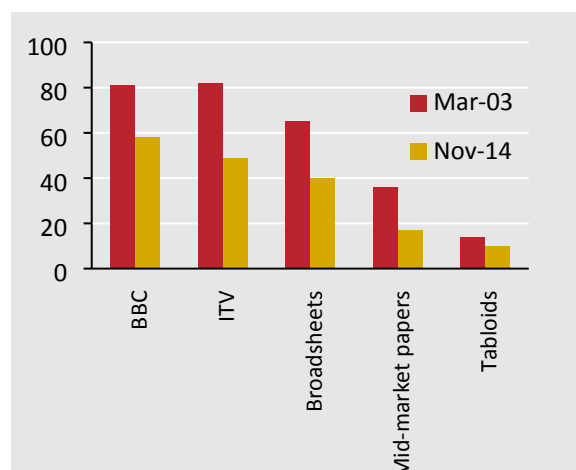
- (v) This distribution of news by the audience is another factor in eroding proprietor influence. In part this is because online the front page (or lead item in a bulletin) is far less important – just 45% UK online news consumers report that they find stories directly via news websites.⁴ Consumers instead frequently arrive at a particular story as a result of a social media link or a search – more than a quarter of the *Guardian*’s traffic comes from social media and almost a half from search, for example.⁵ Such consumers are oblivious to what the proprietor-appointed editor regarded as the lead story of the day.
- (vi) In addition to online changing the audience’s choice of stories to consume, it is also changing the outlets’ choice of stories to offer. Data on traffic to stories is now a powerful influence on editorial decisions, affecting the news agenda and angles on stories. According to Nic Newman:

² Mediatique [for the BBC], *The provision and consumption of online news – current and future*, December 2014
³ Kellie Riordan (Reuters Institute for the Study of Journalism), *Accuracy, Independence, and Impartiality: How legacy media and digital natives approach standards in the digital age*, 2014
⁴ Reuters Institute for the Study of Journalism, *Reuters Institute Digital News Report 2014 -Tracking the Future of News*, June 2014
⁵ *SimilarWeb*, three months to 13 April 2015. Desktop traffic only

“More newsrooms are bringing data into the newsroom to help identify which stories to cover and how to distribute them. The FT has introduced Betsy and the Guardian has Ophan. Others are using sophisticated tools like Chartbeat or Parse.ly which allow real time feedback on how story changes improve engagement. ... [According to Aron Pilhofer of the Guardian] “The goal is to find ways of being a lot smarter about how we publish, when we publish, what we publish, the formats we publish, what tools we use””⁶

- (vii) In effect this is a partial democratisation of the news agenda, not just online but across media. Information about which stories and angles interest audiences may come from online audiences, but influences organisations’ content across all their outlets. Inevitably this ‘capture’ of influence by audience dilutes the influence of proprietors.
- (viii) Yet another factor decoupling share from influence is the ability of personalities and organisations to reach large audiences unmediated by any news outlet. David Cameron’s Twitter account @David_Cameron now has just under one million followers (roughly comparable to the daily readership of the *Times*).⁷ As the O&O/Reuters report for Ofcom recognised “news is no longer just available from traditional news providers, and in the social media world individuals can be as influential as organisations”.⁸ As a consequence, media plurality is just one component of *news* plurality, the ultimate objective.
- (ix) Finally, trust in news outlets has declined appreciably over the last decade (Figure 2). Regardless of whether this is merited, it undoubtedly acts to reduce the influence of those outlets over audiences. If consumers bring scepticism to their consumption (and perhaps more actively cross-check as a result), this puts them in a stronger position to make up their own minds.

Figure 2: Portion trusting journalists, by outlet (percent)⁹



- (x) The unavoidable conclusion is that share of consumption amongst media outlets is *not* (contrary to Ofcom’s assertion) a good proxy for influence of owners. This is not to say

⁶ Nic Newman (Reuters Institute for the Study of Journalism), *Media, Journalism and Technology Predictions 2015*, January 2015
⁷ NRS, *NRS January '14 – December '14 / comScore November '14*, 25 February 2015
⁸ Oliver & Ohlbaum, Reuters Institute & OII [for Ofcom], *Measuring online news consumption and supply*, July 2014, page 4.
⁹ YouGov, *Trust Tracker*, November 2014

share is irrelevant, but it misses a host of important and positive trends in the market, which are reducing the influence of *all* owners. Thus it is entirely conceivable that the influence of proprietors could decline, even while ownership of traditional media was becoming more concentrated.

- 2.3 Ofcom's preferred metric for understanding share is its survey based 'share of references'. In line with our previous submission, in broad terms 21st Century Fox recognises that this approach may have certain merits, relative to other share metrics, and could be seen as the 'least bad' approach to understanding share; but its use must be subject to the vital caveats set out above, as to why share provides only a limited perspective on the state of plurality.
- 2.4 However, as Ofcom rightly acknowledges,¹⁰ the share of references approach (like any other) has its limitations. It is important to recognise these, particularly since they are likely to lead to a consistent *underestimate* of plurality. Any approach which relies on consumer recall is inherently likely to understate the number of outlets used, for example, since it is more likely that a respondent will forget an outlet she used rather than imagine an outlet she did not.
- 2.5 This is particularly a problem for online consumption, where the trend is to casual consumption of an increasing range of outlets. Further, it is simply impossible for such an approach to pick up consumption where the respondent was simply unaware of the source, which may happen if the story is embedded within social media, for example.
- 2.6 Perhaps for these reasons, there is a wide gap between results from Ofcom's survey based approach and more reliable figures (for online use) from Comscore panel data. Ofcom found that consumers use just two sources online. However Mediatique, based on Comscore data for actual usage (just on desktops) found that consumers use 5.1 sources.¹¹
- 2.7 This does not invalidate the share of references approach, since there is a need for a standardised cross-media metric. It does however underline the need to recognise the inherent (downward) bias of this approach to measuring plurality.
- 2.8 Further, as we set out in our prior submission, if share of references is to be given a central role, then it is vital that the details of the underpinning survey be consulted upon. Firstly, which outlets to prompt for needs careful consideration. For instance, Ofcom's latest survey from March/April 2014 appears to have omitted NewsNow and BuzzFeed as sources. However, these were, respectively, the #5 and #16 online news sites in 2013 according to Comscore.¹² NewsNow ranked above the *Telegraph* and the *Sun* online, and BuzzFeed above MSN News – all sites which the survey *did* include.
- 2.9 Equally, the form of questions is important. For example, we have noted that the current survey uses the language "which of the following do you use for news nowadays?" However, it might be that for social media sites the question "... do you see news nowadays?" might elicit different responses, in that the prime reason for use might not be news, but nonetheless news exposure results. This may be

¹⁰ At paragraph 4.40

¹¹ Ofcom, *News consumption in the UK : 2014 Report*, June 2014. Mediatique [for the BBC], *The provision and consumption of online news – current and future*, December 2014. Note that Ofcom's figure is based on March/April 2014 survey data, whereas the Mediatique figures are for Q4 2013. Given the upward trend in multi-sourcing, this means that the figures given above likely understate the gap between the two methodologies

¹² Mediatique [for the BBC], *The provision and consumption of online news – current and future*, December 2014

an instance where the survey approach is leading to an *avoidable* understatement of breadth of consumption.

ii. *Difficulties in focus on wholesale provision*

2.10 We now turn to issues of wholesale news provision. Ofcom notes that the Secretary of State requested at least one metric focused closely on media ownership, and on this basis Ofcom posits a need to consider both wholesale and retail news provision.¹³ This is puzzling. Media ownership can be considered entirely satisfactorily at a retail level, by combining the consumption of different outlets with shared ownership – indeed, this is precisely the approach Ofcom has taken in past assessments of plurality. ‘Retail share of references aggregated by owner’ is absolutely a metric which meets the Secretary of State’s requirement. Thus there is no reason for wholesale provision to be given particular status because of the need to consider media ownership.

2.11 In its discussion of wholesale provision, Ofcom repeats its view that commercial radio news is “*provided in its entirety by the wholesale entity [Sky News Radio]*”. This is simply incorrect. Consider the news bulletins at 4pm for 13th April, from Classic FM, Jack FM Oxfordshire and direct from Sky News Radio (via its website). The running orders were as follows:

Figure 3: Running order of radio news bulletins, 4pm 13th April 2015

Classic FM	Jack FM	Sky News Radio
Conservatives challenge Labour budget	Conflict in Gaza	Labour launches manifesto
Man convicted of sex offenses	Green party poster campaign	Trial of nurse for murder
Putin lifts Iran sanctions	US school shooting	Search for missing Cardiff woman
US school shooting	[Local story]	US school shooting
Celebrity tax evasion	[Local sport]	International Cricket
International Cricket	International Cricket	Oldest ever mother of quads
Financial news		

2.12 What is remarkable about these running orders is not the commonality but rather the diversity. While both Classic FM and Sky led with a story related to the Labour manifesto, they took quite distinct angles. This story apart, there was no overlap at all in the top 3 stories for these three outlets. The outlets are taking different views of the news agenda, and taking different approaches to the stories which are in common. This is not to say that Sky News Radio is not an important input for commercial radio stations (just as the Press Association is for newspapers), but it would be a misrepresentation to suggest the commercial radio news is homogeneous, dictated by centralised decisions by Sky. Local editorial control is evidently in effect.

2.13 Ignoring this diversity would not only lead to a measurement framework that understates the true extent of plurality; but also to one that would arguably be inconsistent with the test for plurality intervention in merger cases and therefore of limited use in practice. As noted in 21st Century Fox’s

¹³ At paragraph 1.22

previous submission to Ofcom, under the existing statutory regime, it is clear that the most relevant aspect of the news value chain for a plurality assessment is the supply of news content to audiences. Ignoring real diversity in content supplied to audiences on the basis it was produced by a single wholesaler would be analogous to disregarding internal plurality within groups of media enterprises under common ownership (which, as determined by the Court of Appeal in the *Sky/ITV* case, is an important part of the statutory framework).

iii., Focus on consumption rather than availability

- 2.14 As a general point, 21st Century Fox is concerned that Ofcom's approach appears to be to focus on consumption patterns to the near-exclusion of availability, despite acknowledging at the beginning of the consultation that plurality involves "*ensuring that there is a diversity of viewpoints available*" as well as consumed.¹⁴
- 2.15 21st Century Fox acknowledges that the extent to which consumers tend actually to have exposure to a range and variety of opinions forms an essential part of an overall plurality assessment. However, 21st Century Fox believes that the availability of alternative views (even if consumed by relatively limited numbers at a given time) is in itself significant, in particular because consumers can very easily switch between providers by steps as simple as taking a different title from a newspaper or magazine rack, changing the channel or clicking on a new internet link.
- 2.16 Focusing near-exclusively on consumption would also represent a departure from the approach taken in previous plurality assessments, where the relevant authorities regarded availability as relevant. In *Sky/ITV*, the Competition Commission noted the need to consider the implications of the plurality of persons with control of media enterprises "*for the range and variety of information and views made available to audiences*".¹⁵ It is also worth noting that one of the plurality-related public interest considerations set out in the Enterprise Act 2002 is expressly framed in terms of availability: section 58(2C)(b) specifies "*the need for the availability of a wide range of broadcasting [...]*". As observed above, 21st Century Fox believes it would be unfortunate for Ofcom to develop a measurement framework for plurality which diverges from the principles underlying the statutory test for intervention in merger cases.

iv. Importance of predictability and limits on discretion

- 2.17 In its previous submission, 21st Century Fox emphasised the need to design a transparent, predictable measurement framework that would ensure qualitative, contextual factors are afforded appropriate weight in every case, rather than one capable of being used in an arbitrary or opaque manner; given the potential for the measurement framework to inform regulatory action.
- 2.18 21st Century Fox is concerned that Ofcom's latest consultation does not directly address this challenge, and believes it should ensure that its advice to the Secretary of State sets out concrete proposals in this regard.

¹⁴ At paragraph 1.1.

¹⁵ Competition Commission Report, *Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc*, 14 December 2007, at paragraph 30. See similarly paragraph 5.61..

3. RESPONSES TO SPECIFIC QUESTIONS RAISED BY OFCOM

i. Do you agree with our proposed measurement framework for media plurality? What, if anything, should be added to the measurement framework?

- 3.1 The measurement of plurality sits within the context of (potential) restrictions on media mergers. Its purpose is to ensure that no one owner has undue influence on audiences. Thus if it is to be complete, the measurement framework must take into account factors that affect influence beyond simply consumption of news from particular outlets. As set out above, there are numerous reasons to believe that the influence of owners on outlets is diminishing, as is the influence of outlets on audiences. These include: the rise of multi-sourcing; audience cross-checking and scepticism; the decline of the ‘front page’ and rise of story-by-story consumption; the real-time response of outlets to consumption patterns; the direct routes to audiences now available to personalities and organisations.
- 3.2 An undue focus on share of media consumption metrics risks missing these important factors. Ofcom does state that “alongside quantitative metrics ... contextual factors [are] an integral rather than a supplementary part of the measurement framework”¹⁶, which is encouraging. However, the above factors are omitted from its discussion of such contextual factors.
- 3.3 Moreover, while such issues may be challenging to blend into a single metric such as share of references, there is no reason they cannot be quantified and tracked, both from existing sources and by incorporation into Ofcom’s own future surveys.

ii. Do you agree with our approach to online content? If not, how could it be improved?

- 3.4 Addressing online content via a survey approach in order to be able to make a cross-media assessment of consumption is appropriate, given the lack of a better alternative. However, for the reasons discussed above, this approach is likely to underestimate diversity of consumption. For this reason, cross checking against technical sources will be particularly important, and the results of such analysis should be reported alongside the survey-based findings.
- 3.5 Moreover, because of the passive and/or incidental nature of much online news consumption (particularly via social media), survey questions need to be very carefully crafted to avoid inadvertently biasing responses. In particular, respondents should be asked where they *see* news rather than which sites they *use* for news; otherwise, there is a significant risk that the survey would fail to capture important news outlets that contribute materially to media plurality.
- 3.6 Designing an approach that captures online consumption to the fullest extent possible is clearly vital; otherwise the framework will be of little use now and less in the future, as online sources (including social media) become more and more important. As an illustration of this, it is worth noting that just in the time since 21st Century Fox’s last submission to Ofcom, Facebook has taken another significant step to enhance its role as a news source for its users through the launch of its “Instant Articles” system in conjunction with the BBC, the Guardian and other European and US news providers. This will drastically reduce the delay users currently face in accessing third party news content (while it loads), by hosting that content on Facebook’s own servers.¹⁷ As a result of this arrangement, in addition to the newsfeed algorithm which already provides an editorial function,

¹⁶ 4.59

¹⁷ See BBC News, *Facebook tightens its grip on news* (13 May 2015), available at <http://www.bbc.co.uk/news/technology-32707014>.

Facebook will host news articles on its own servers. This blurs even further the distinction between the role of a social media platform and that of a news provider. It is essential to capture this dynamic in the assessment of the media plurality landscape.

iii. Do you agree with our approach to media ownership? If not, how could media ownership be better captured?

3.7 Ofcom's focus on wholesale in the context of media ownership is inappropriate. As we have noted, ownership can (and should) be assessed at the retail level, and there is no basis for using a requirement for an ownership-related metric as a justification for wholesale analysis. The difference between a retail and wholesale analysis would anyway be minor, were it not for Ofcom's mistreatment of commercial radio news as being under Sky's control.

3.8 In relation to Ofcom's proposals regarding the consolidation of news sources under common ownership, 21st Century Fox believes that what matters in the provision of news in this regard is the actual extent of control exercised by a proprietor over news outlets, and Ofcom must take internal plurality into account even in the situations its consultation suggests involve "full" rather than "partial" control. As Ofcom will be aware, this position is supported by the judgment of the Court of Appeal in the *Sky/ITV* case.¹⁸

iv. Do you agree with our approach to measuring cross-media consumption? Are there other metrics which might better capture cross-media consumption?

3.9 21st Century Fox continues to support a survey-based approach to understanding cross-media consumption, on the basis that it is the 'least bad' method. However, its inherent biases (particularly regarding online consumption) need to be recognised, and the survey itself should be consulted on given the central role Ofcom is assigning to it.

v. Do you agree with our approach to measuring impact? If not, how could impact be better captured?

3.10 Measuring impact is undoubtedly challenging. In broad terms the approach set out by Ofcom seems appropriate as far as it goes. However, it is incomplete in two ways.

3.11 Firstly, it is not deep enough. In its discussion of impact, Ofcom focuses entirely on the influence of media outlets on audiences. However, the purpose of plurality rules is to limit the influence of proprietors on audiences. The chain of influence runs from the proprietor, via the outlet to the audience. Ofcom's discussion of impact simply does not address the first link of this chain, and (for reasons discussed above) there are reasons to think this link is weakening – the democratisation of the news agenda is reducing the influence of owners.

3.12 Secondly, Ofcom's analysis is not wide enough. It appears to assume a fixed quantum of influence, to be divided up amongst news outlets. However, direct communication from personalities and organisations to audiences can bypass the media, reducing the influence of *all* outlets.

¹⁸ *British Sky Broadcasting Group Plc v Competition Commission* [2010] EWCA Civ 2 – see paragraph 121: "...when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control."

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

3.13 Subject to the caveats stated above and previously regarding the need for predictability and limits on Ofcom's discretion, 21st Century Fox strongly agrees with the use of contextual factors as part of the framework. Contextual factors are essential to the framework, precisely because influence is hard to quantify. In particular, issues driving changes to the strength of the 'chain of influence' should be considered, as set out above.

3.14 Moreover, a measurement framework that fails to account fully for the qualitative considerations likely to be encompassed within the heading "contextual factors" would, if applied in a merger case, be inconsistent with the qualitative assessment required by the Court of Appeal's judgment in the *Sky/ITV* case.

vii. Do you agree with our approach to measuring plurality in the UK nations? If not, how could plurality in the nations be better measured?

3.15 21st Century Fox has no specific comments on this, although the points made above in relation to measuring media plurality in the UK generally would be relevant here as well.

20 May 2015