



Report to the Secretary of  
State on the operation of the  
media ownership rules listed  
under Section 391 of the  
Communications Act 2003

Statement

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# About this document

Parliament has put in place media ownership rules for television, radio and newspapers. Section 391 of the Communications Act 2003 (“The Act”) requires that Ofcom review the operation of these rules at regular intervals and report on its review to the Secretary of State.

This document is Ofcom’s fourth such report. It sets out how the context in which these rules operate has changed over time and considers whether they remain necessary and effective in the interests of citizens and consumers.

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## Section 1

# Summary

## The current statutory framework

- 1.1 Media services, across television, radio, online and print, are used by tens of millions of people in the UK every day. They inform people about a range of issues and provide a powerful platform for public debate. Given the central role that the media plays in people's lives, Parliament has put in place a number of rules related to who is able to own certain types of media services:
  - 1.1.1 the national cross-media ownership rule, which prevents large newspaper groups from owning a Channel 3 licence;
  - 1.1.2 the Channel 3 appointed news provider rule, which requires the regional Channel 3 licensees to appoint a single news provider;
  - 1.1.3 the Media Public Interest Test, which allows the Secretary of State to intervene in media mergers to determine whether the merger might result in harm to the public interest; and
  - 1.1.4 the Disqualified Persons Restrictions, which prevent certain bodies or persons from holding broadcast licences generally, others from holding certain types of broadcasting licences and still others from holding broadcast licences unless Ofcom has determined that it is appropriate for them to do so.
- 1.2 The rationale for these rules is set out in more detail at section 2. Taken together, they are intended to ensure that the media operate in the public interest, in part by promoting plurality and preventing undue influence by any one media owner.
- 1.3 Ofcom has a statutory duty to review, at least every three years, the operation of these rules and report on its conclusions, including recommendations for any change, to the Secretary of State.

## Rules related primarily to plurality

- 1.4 Media plurality makes an important contribution to a well-functioning democratic society. It ensures citizens are informed and able to access and consume a wide range of viewpoints across TV, radio, online and print media from a variety of media organisations. And it prevents too much influence over the political process or public opinion being exercised by any one media owner.
- 1.5 We therefore consider plurality as: ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.
- 1.6 Plurality has been the subject of much public debate. In 2011, the Secretary of State asked Ofcom to consider how the statutory framework could be changed to address the effect on media plurality of organic growth or market exit of media enterprises. In 2012, we recommended that periodic reviews of plurality be introduced.

- 1.7 On 5 November 2015, Ofcom published a proposed framework for measuring plurality for Government to consider. This was developed at the request of the Government, which had previously indicated that the purpose of the measurement framework was to allow a baseline assessment of media plurality in the UK. It is now for Government to decide whether to adopt this framework and to consider what degree of plurality is sufficient.
- 1.8 In advance of this, there are a number of rules related primarily to plurality which we are required to assess now as part of our latest statutory review: the national cross-media ownership rule, the Channel 3 appointed news provider rule and the Public Interest Test.<sup>1</sup> We have focussed this review primarily on changes since the last review in 2012, when we recommended no change. But we have also taken a longer term view where possible, to consider changes that have taken place in the market since the Act.
- 1.9 In devising these rules Parliament had a particular focus on Channel 3 which, after the BBC, was in the 1980s and 1990s by far the most important provider of national television news and under separate ownership from the national newspapers.
- 1.10 While the provision and use of online news has grown significantly in recent years, and is continuing to grow, TV remains the platform most used for news. In 2015, 67% of people claim to watch TV news compared to 41% saying they use the internet<sup>2</sup>. As in the 80s and 90s, Channel 3 news services are still the most-used TV news services, by some margin, after those of the BBC. Despite falling circulation, newspapers remain widely read (reaching nearly half the population each day) and influential among opinion-formers and policy-makers.
- 1.11 We have concluded that despite changes in provision and consumption:
- 1.11.1 the national cross-media ownership rule still plays an important role within the current framework, as it secures a certain level of plurality beyond the BBC and limits the potential for a consolidated entity to exert undue influence;
  - 1.11.2 the appointed news provider rule also remains necessary as it guarantees a degree of plurality in wholesale news provision and ensures that the appointed C3 news provider is of sufficient scale to compete; and
  - 1.11.3 the Media Public Interest Test serves as an important backstop, allowing intervention in media mergers (at the discretion of the Secretary of State)<sup>3</sup> and has the benefit of being a targeted rather than a blanket intervention.
- 1.12 We therefore recommend the retention of these three rules for now. However, if the use and importance of TV news and newspapers continues to decline, the longer-term justification for these rules in their current form may become less clear.

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<sup>1</sup> Note that some of these also operate to limit the possibility of undue influence.

<sup>2</sup> Ofcom news consumption survey 2015.

<sup>3</sup> The Secretary of State may intervene if (a) the enterprises cease to be distinct; (b) the value of the enterprise being taken over exceeds £70 million; and/or (c) the merger results in at least a 25% share of supply of goods or services in the UK (or substantial part of the UK) or involves an enterprise that has a 25% share of supply of newspapers or broadcasting.

## Rules primarily intended to prevent undue influence

- 1.13 All broadcast services seek to influence their listeners and viewers to some extent, for instance by exploring the issues of the day, shaping our tastes in music or by promoting certain products through advertising.
- 1.14 Parliament has put in place a number of specific restrictions, which prevent certain types of bodies, such as advertising agencies or political bodies, from holding some or all broadcast licence types. The bodies who are restricted are generally those which might be expected to have a singular aim or point-of-view on matters of public policy or public controversy, e.g. political bodies, local authorities and religious bodies. Such bodies appear to have been viewed as either less likely than others to meet the expected standards or more likely to seek to exert undue influence over programming content.
- 1.15 These Disqualified Persons restrictions provide protection in addition to that afforded by other regulatory tools:
- 1.15.1 Ofcom has an ongoing duty<sup>4</sup> to be satisfied that anyone holding a broadcasting licence is fit and proper to do so and can refuse to issue a licence to (or withdraw a licence from) anyone it cannot be satisfied is fit and proper.
- 1.15.2 Additionally, the Broadcasting Code contains rules which prevent anyone holding a broadcast licence from broadcasting material which: poses risks to children; incites crime; is harmful or unjustifiably offensive; or promotes or gives undue prominence to products, services and trade marks in programmes. Furthermore, anyone holding a broadcast licence must report and present news with due accuracy and with due impartiality. Matters of political or industrial controversy and public policy are also subject to rules on impartiality. Were a broadcaster to breach any of these rules then Ofcom may impose a sanction, such as a fine or revocation of a licence.
- 1.16 While changes in the market may have reduced the need for the disqualified person restrictions, the likely impact on consumers of removing these rules now is unclear. As such, we do not propose any changes to these restrictions.

## Next steps

- 1.17 Significant changes in the pattern of news consumption and in the diversity of available news sources are taking place and these trends are expected to continue over the next few years. As a result, we consider that a comprehensive analysis of the media ownership rules will be required soon. We therefore intend to carry out our next review of the media ownership rules in 18 months' time. We will consult publicly as part of this review.
- 1.18 To inform our next review we intend to use the media plurality measurement framework as submitted to the Secretary of State.

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<sup>4</sup> Sections 3(3) and 86(3) of the Broadcasting Act 1990 and sections 3(3) and 42(3) of the Broadcasting Act 1996..

## Section 2

# About this review

## The statutory framework

- 2.1 Media services, across television, radio, online and print, are used by tens of millions of people every day. They inform people about a range of issues and provide a powerful platform for public debate.
- 2.2 Given the central role that the media play in people's lives, Parliament has over the years put in place (and sometimes amended or removed) a number of rules related to who is able to own certain types of media services. The existing rules are as follows:
- 2.2.1 ***The national cross-media ownership rule:*** which prohibits a newspaper operator with a market share of 20% or more of newspaper circulation<sup>5</sup> from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.
- 2.2.2 ***The Channel 3 appointed news provider rule:*** which acts so as to require regional Channel 3 licensees to appoint a single news provider among them. Individuals or organisations disqualified from holding a Channel 3 licence are also disqualified from being the Channel 3 appointed news provider.
- 2.2.3 ***The Media Public Interest Test:*** which allows the Secretary of State to intervene in a merger involving a broadcaster and/or a newspaper enterprise if certain conditions are met.<sup>6</sup> The Secretary of State may decide to issue an intervention notice which triggers a review of whether the merger might result in harm to the public interest.<sup>7</sup>
- 2.2.4 ***The Disqualified Persons Restrictions:*** which prevent certain bodies or persons from holding any broadcast licences, others from holding certain kinds of broadcast licences, and still others from holding broadcast licences unless Ofcom has determined that it is appropriate for them to do so.
- 2.3 These rules, taken together, are intended ensure that the media operate in the public interest, in part by promoting plurality and preventing undue influence by any one media owner.

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<sup>5</sup> We consider that this does not include online circulation.

<sup>6</sup> The Secretary of State may intervene if (a) the enterprises cease to be distinct; (b) the value of the enterprise being taken over exceeds £70 million; and/or (c) the merger results in at least a 25% share of supply of goods or services in the UK (or substantial part of the UK) or involves an enterprise that has a 25% share of supply of newspapers or broadcasting.

<sup>7</sup> This power has been used three times since 2002, to look at: the completed acquisition of ITV shares by British Sky Broadcasting (2006), the proposed acquisition of British Sky Broadcasting shares by News Corporation (2010), and the completed acquisition of Guardian Media Group (GMG) Radio by Global Radio Group (2012).

## Our approach

- 2.4 Ofcom has a statutory duty to review the operation of media ownership rules at least every three years. Ofcom must set out recommendations on whether or not the Secretary of State should exercise his powers to make secondary legislation which would change the rules.
- 2.5 The Act does not prescribe how Ofcom should conduct its review nor does it set out what Ofcom should consider. Accordingly Ofcom is afforded some degree of discretion. For this review, we have assumed that Parliament's goals of ensuring the media operates in the public interest, in part through securing plurality and preventing undue influence, remain valid. We have focused our analysis on the extent to which the current rules contribute to the delivery of these goals.

## Links to other work on media plurality

- 2.6 In parallel with this review we have carried out further work related to the measurement of media plurality. We recently published advice to the Secretary of State on which indicators might be included in such a measurement framework.<sup>8</sup> This advice was requested in 2014 in order to be used for a baseline assessment of media plurality in the UK, which could inform future considerations by Government of media plurality policy. The advice draws on the work we did in 2012, when we recommended to the then-Secretary of State periodic market assessments of plurality.
- 2.7 Our advice proposes a range of indicators which assess the availability of news sources, their consumption and their impact on users. We have also proposed to take into account qualitative contextual factors. Where such information has been available we have used it in our review of the media ownership rules.

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<sup>8</sup> *Measurement framework for media plurality: Ofcom's advice to the Secretary of State for Culture, Media and Sport*, published 5 November 2015, available at <http://stakeholders.ofcom.org.uk/consultations/media-plurality-framework/>.



## Section 3

# Securing plurality

## Why plurality matters

- 3.1 Media plurality makes an important contribution to a well-functioning democratic society through:
- informed citizens who are able to access and consume a wide range of viewpoints across TV, radio, online and print media from a variety of media organisations; and
  - preventing too much influence over the political process or public opinion being exercised by any one media owner.
- 3.2 We therefore consider plurality as: ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.

## The role of the media ownership rules in securing plurality

- 3.3 Three of the media ownership rules appear intended in particular to secure plurality:
- 3.3.1 ***The national cross-media ownership rule:*** which allows for a level of cross-media ownership, between Channel 3 licensees and print newspaper operators, but prevents this from going above a threshold set by Parliament. The effect of this rule is to protect plurality and diversity in national media ownership, preventing the biggest newspaper operators from acquiring one of the biggest commercial broadcasters in the UK.
- 3.3.2 ***The Channel 3 appointed news provider rule:*** which helps to further plurality in news provision by securing the operation of an additional major wholesale provider of news in the UK.
- 3.3.3 ***The Media Public Interest Test:*** which allows the Secretary of State to intervene, at his discretion, in mergers involving newspaper and/or broadcast enterprises where certain conditions are met.<sup>9</sup> An intervention triggers a review of whether the merger might be expected to operate against the public interest.<sup>10</sup>

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<sup>9</sup> The Secretary of State may intervene if (a) the enterprises cease to be distinct; (b) the value of the enterprise being taken over exceeds £70 million; and/or (c) the merger results in at least a 25% share of supply of goods or services in the UK (or substantial part of the UK) or involves an enterprise that has a 25% share of supply of newspapers or broadcasting.

<sup>10</sup> Our review of the media ownership rules must consider this regime so far as it relates to such interventions “in connection with newspapers or other media enterprises”. An enterprise is a “media enterprise” if it “consists in or involves broadcasting”. (Section 58A(1) of the Enterprise Act 2002 (as amended). Section 44(9) provides the applicable definition of “broadcasting”).

## Are restrictions on Channel 3 licensees and newspapers still needed?

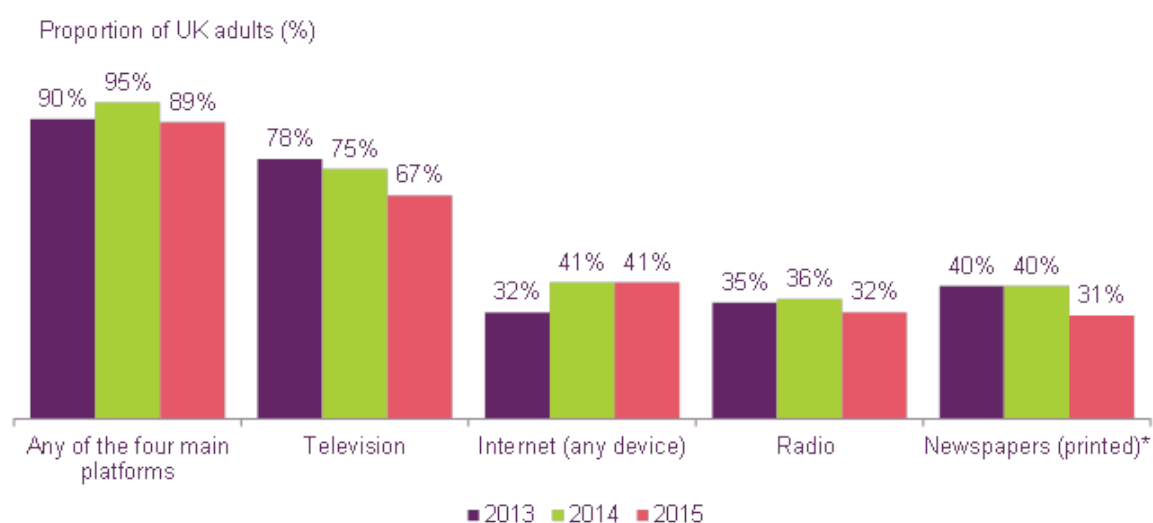
### The rational for the restrictions

- 3.4 When the national cross-media ownership rule and the Channel 3 appointed news provider rule were first put in place in the 1990s TV and newspapers were the most influential types of media and widely consumed, and Channel 3 was by far the most important provider of television news after the BBC. Providers were also limited in number.
- 3.5 For this reason the rule focuses on Channel 3 providers and printed newspapers but, as presently formulated, does not take account of the use of online media by consumers. This section considers whether developments in the market have undermined the effectiveness of the rule or might do so in future.

### Online news is becoming more important

- 3.6 Take-up of broadband has grown dramatically over the past decade, with the proportion of households with a broadband connection rising from 31% in 2005 to 80% in 2015.<sup>11</sup> Three in five adults now access the internet through their mobile phone.<sup>12</sup> Increasing connectivity has led to disruption in many areas of the communications market, including news consumption, giving consumers access to the many sources of news available online.
- 3.7 Consequently, people are increasingly choosing to source news online. At an aggregate level, the internet has become the second-most popular platform used for news. In 2015 it was used by 41%, compared to 31% for print newspapers, 32% for radio and 67% for TV.<sup>13</sup> By contrast, only two years before, in 2013, online news was used by 32%, compared to 40% for printed newspapers and 78% for TV (see Figure 1).

Figure 1. Platforms used for news “nowadays”



<sup>11</sup> Ofcom Technology Tracker, Quarter 1 each year, all adults aged 16+ – total broadband access, excluding using a mobile phone.

<sup>12</sup> Ofcom Technology Tracker, Quarter 1 each year, all adults aged 16+.

<sup>13</sup> Ofcom news consumption survey 2015.

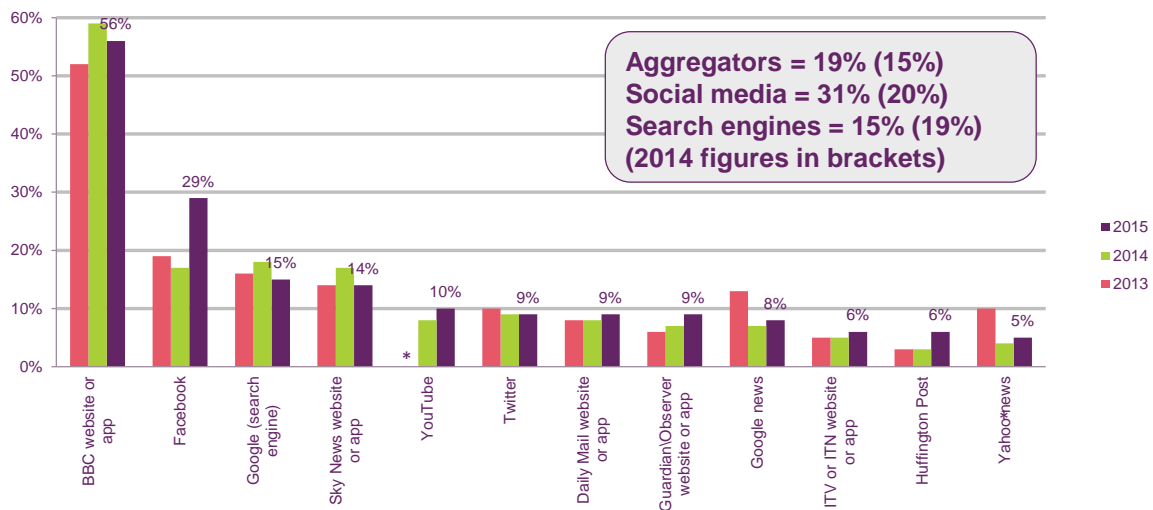
Source: Ofcom news consumption survey 2015 (\* 'Newspaper' code was changed in 2015 to 'Newspaper (printed)')

3.8 The increase in the use of the internet and apps as a platform for news is particularly marked among younger age groups, increasing from 44% in 2013 to 59% in 2015 for the 16-24 age group. Just over one in ten (11%) consumers use only the internet as a source of news.<sup>14</sup>

3.9 The relatively low cost of entry into content provision online has led to a plethora of sources of online news which gather and disseminate news in different ways. These include offers from traditional players, such as the websites of print newspaper groups and television news services, and alternative providers, such as predominantly online providers (e.g. BuzzFeed or Vice Media) and personal blogs. Figure 2 demonstrates that traditional providers are doing well online but also that newer services are gaining sizable audiences.

**Figure 2. Websites or apps used for news “nowadays”**

Proportion of those that use the internet for news (41% of UK adults)



Source: Ofcom news consumption survey 2015. Base: All who use internet for news (1029).

3.10 The most popular source of news online is still the BBC by a wide margin, with a reach of 56% among those that use the internet for news. Sky News online (14%) and ITV/ITN online (6%) are also popular. Among the newer entrants, Facebook (29%) is the most widely used, with 15% using Google Search followed by YouTube (10%) and Twitter (9%). The Daily Mail and The Guardian also rank among the most-used news websites, both used by 9% of respondents.<sup>15</sup>

**At the same time as the influence and use of online services has been growing, newspapers have faced a challenging environment.**

3.11 Daily print-copy newspaper circulation has declined from an average of 10.9m copies per day in 2005 to around 6.6m per day in 2015.<sup>16</sup> Print newspaper reach has dropped from 73% in the twelve months to April 2004 to 45% in 2015.<sup>17</sup> The decline

<sup>14</sup> Ofcom news consumption survey 2015.

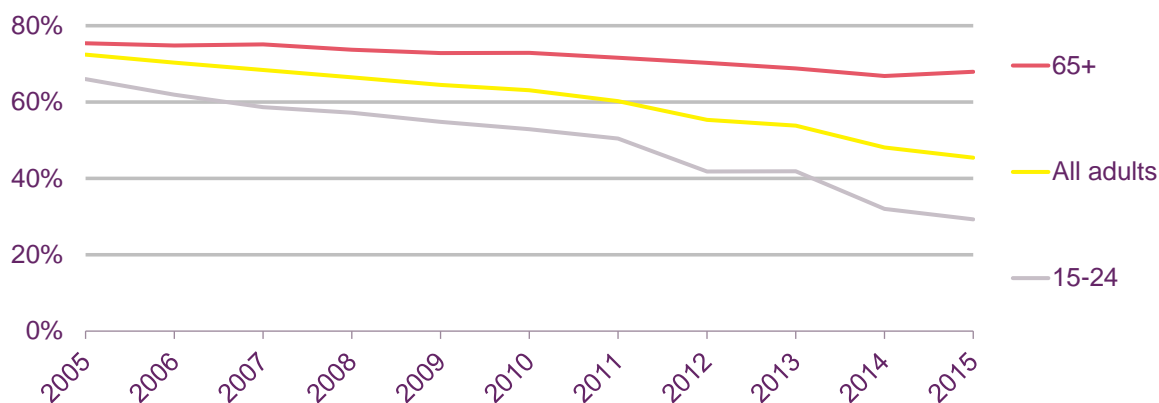
<sup>15</sup> Ofcom news consumption survey 2015.

<sup>16</sup> Ofcom analysis of Mediatel/ABC 6-monthly average circulation data.

<sup>17</sup> Ofcom news consumption survey 2015 (National Readership Survey / Kantar Media analysis).

is common among almost all newspaper publishers.<sup>18</sup> Despite this decline, newspapers remain widely-used, reaching almost half of all adults.<sup>19</sup> There is, though, a clear demographic split as shown in figure 3 below.

**Figure 3. Reach of national newspapers, by demographic: 2004-2015**



Source: National Readership Survey / Kantar Media analysis

Note: Data represent the twelve months until March of the stated year. Readership in 2012 may be overstated, as it is not possible to de-duplicate readers of *i* and other titles due to factoring. Includes the *Daily Record* and *Sunday Mail*. *Financial Times* is no longer measured by NRS and is not included in data for 2014 and 2015.

3.12 Consumption has fallen among all age groups, but the fall has been most dramatic among younger age groups. Among the 15-24 age group, reach more than halved from 66% to 30% between 2005 and 2015. This compares to a fall from 75% to 68% among the 65+ age group across the same time period and suggests that printed newspaper readership is likely to decline further in future.<sup>20</sup>

3.13 Newspapers have responded by developing their online offering. While the growth in the online readership has not made up for the decline in print readership there are some notable successes. *The Daily Mail* and *The Guardian* have both increased their overall readership through their online presence, and in June 2015 reached 57% and 51% of the online audience respectively.<sup>21</sup> These sites were both among the most popular sources of online news (see Figure 4).

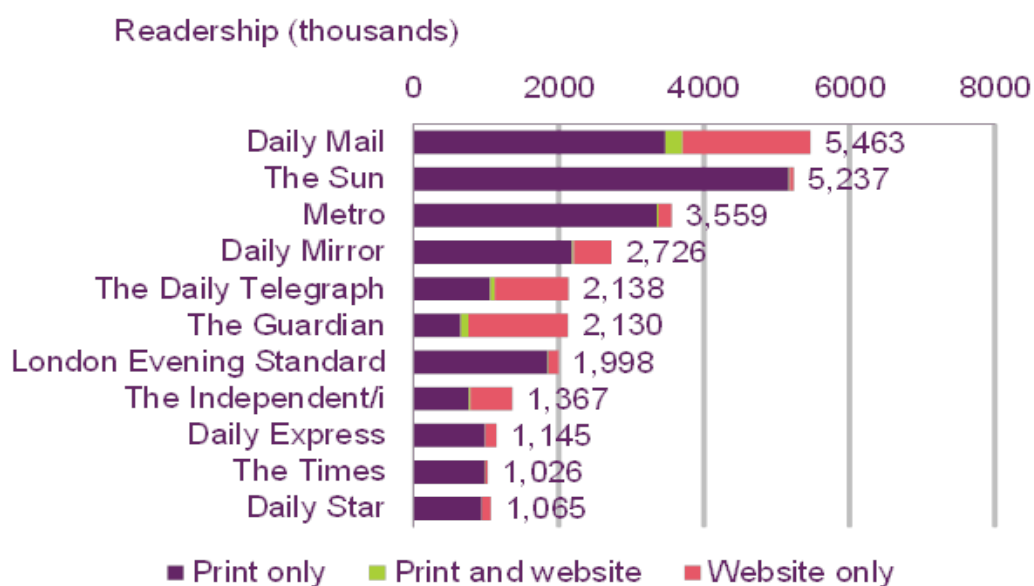
<sup>18</sup> Ofcom news consumption survey 2015.

<sup>19</sup> Ofcom news consumption survey 2015.

<sup>20</sup> Ofcom news consumption survey 2015 (National Readership Survey / Kantar Media analysis).

<sup>21</sup> Ofcom analysis using comScore MMX Multi-Platform, June 2015, UK, % Reach, adults 15+.

**Figure 4. Combined print and online\* readership of daily newspapers, 2015**



Source: Ofcom analysis of NRS/comScore PADD, March 2015. NRS average issue readership April March fused with comScore in March of each year. Note: The Independent 2014 includes print readership of i. \*The data above includes only visits from laptop and desktop computers. Smartphone and tablet use is excluded because of inconsistency of available data across devices and between browser use and application use.

- 3.14 While declining consumption might suggest declining impact, newspapers continue to be effective at influencing the overall news agenda. For instance, many broadcast programmes run features on what the papers say each day, extending newspaper influence beyond their own readership to that of broadcasters’ audiences. The Leveson Inquiry noted that “the press is considered a voice of authority in society” and that it is “because of the authoritative quality of the press, combined with its access to mass audiences, that communication by the press, as an institution of considerable power, has a significant impact on society”.<sup>22</sup>
- 3.15 Newspapers also play an important role in carrying out investigative journalism and in-depth analysis of current affairs, which can in turn be picked up elsewhere in the media. They also play a particular role at times of elections as indicated in a recent study by Cardiff University which found occasions where the press set the agenda during the 2015 General Election.<sup>23</sup>
- 3.16 Various major newspapers are rated highly by just under half of newspaper readers for their importance, accuracy and reliability, trustworthiness and the range of opinions they offer.<sup>24</sup> Smaller proportions of their readers rated newspapers highly for

<sup>22</sup> The Leveson inquiry into the culture, practices and ethics of the press, November 2012, Volume I, [http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780\\_i.pdf](http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_i.pdf).

<sup>23</sup> Cushion, Stephen and Sambrook, Richard (2015), Cardiff University research monitoring TV news content during the General Election 2015. The study highlighted high-profile moments when newspapers led the TV news agenda: the leaked memo about Nicola Sturgeon’s alleged support for David Cameron (*The Telegraph*); Michael Fallon’s comments about Ed Miliband (*The Times*) and the two letters from business leaders in published in support of the Conservative Party (*The Telegraph*). <http://www.cardiff.ac.uk/jomec/research/researchgroups/journalismstudies/fundedprojects/15TVnewscoverage.html>

<sup>24</sup> Ofcom news consumption survey 2015.

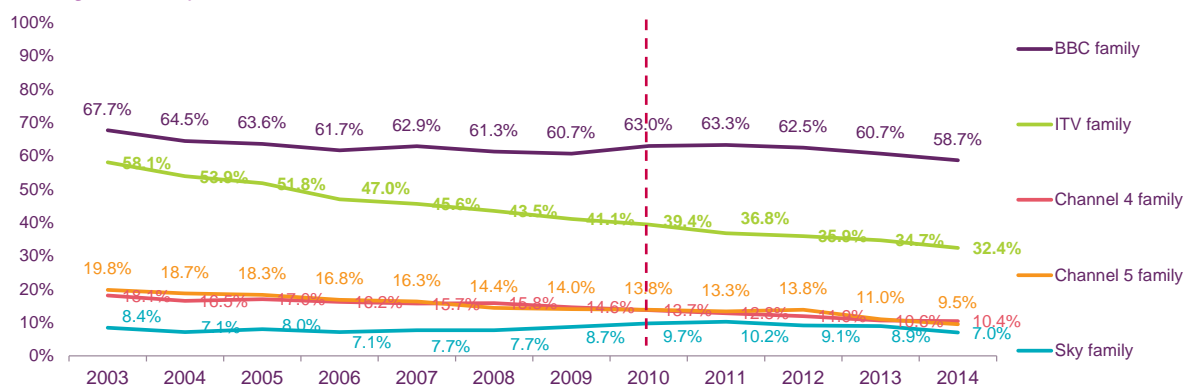
impartiality and “helps me make up my mind”. Unlike television and radio services, newspapers are not subject to impartiality rules. As such, many newspapers reflect a particular political or ideological orientation, playing an important and complementary role to TV journalism.

### ITV is still the most significant commercial TV provider of news, though its share of viewing is declining

3.17 Among all TV viewers, ITV’s average weekly reach with respect to national and international news has declined since 2003, dropping from 58% to 32% (Figure 5).

**Figure 5. Average weekly reach, all people aged 4+, national and international news by channel: 2003-2014.**

#### Average weekly reach



Source: BARB, all individuals (4+). Refer to channel definitions for channels included in the analysis. Notes: National / international news genre; Network Plus to 2009 and Network post 2010; network programming based on 4+ area filter; reach criteria = 3 consecutive minutes for all channel groups. S4C is excluded from this analysis. A new BARB panel was introduced in 2010, as a result, pre- and post-panel change data must be compared with caution (see dotted line).

3.18 As the chart above shows, despite declining viewing, ITV remains by some distance the second most popular channel for news, second only to BBC One. Channel 4 is achieving a weekly news reach of 10% (down from around 18% in 2003), Channel 5 is reaching 9% (down from around 20%) and Sky News 7% (compared to just over 8% in 2003).

3.19 While the trend above is for all viewers, the same trend is evident among those who just use TV for news. Among this section of the audience, ITV1 has a reach of 41% compared to 19% for Sky News, the third-most popular channel (BBC One has a reach of 72%).<sup>25</sup>

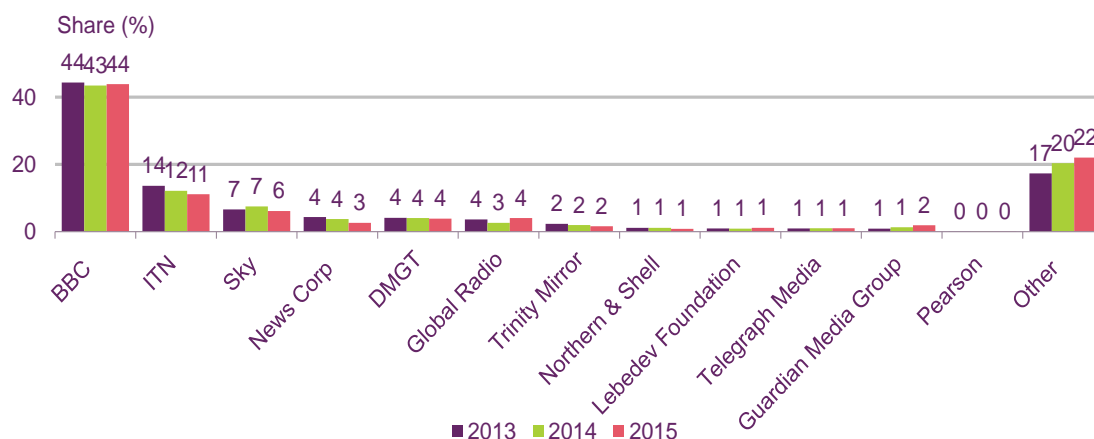
3.20 Ofcom uses "share of references"<sup>26</sup> to compare consumption of news across different platforms with different consumption measures. This can be measured at both a retail level, for instance looking at ITV, Channel 4 and Channel 5 as separate providers of news, or at a wholesale level, measuring the share of ITN (the provider used by ITV, C4 and C5). By this measure, at the wholesale level, ITN (the Channel

<sup>25</sup> Ofcom news consumption survey 2015.

<sup>26</sup> Share of references is calculated by asking people which news sources they use and the frequency with which they use them. Each reference is then weighted for frequency and summed. This means that the share of each source or provider can then be calculated as their total number of references, expressed as a proportion of all references for all news sources.

3 appointed news provider) accounted for 11% of references in 2015 (12% in 2014).<sup>27</sup> The BBC accounted for 44% (43% in 2014), and Sky for 6% (7% in 2014)<sup>28</sup> (Figure 6).

**Figure 6. Share of references: wholesale level**



*Source: Ofcom news consumption survey 2015. Note: Wholesale is classified as the company that provides the news for the given source. This wholesale category is derived from responses given about individual news titles.*

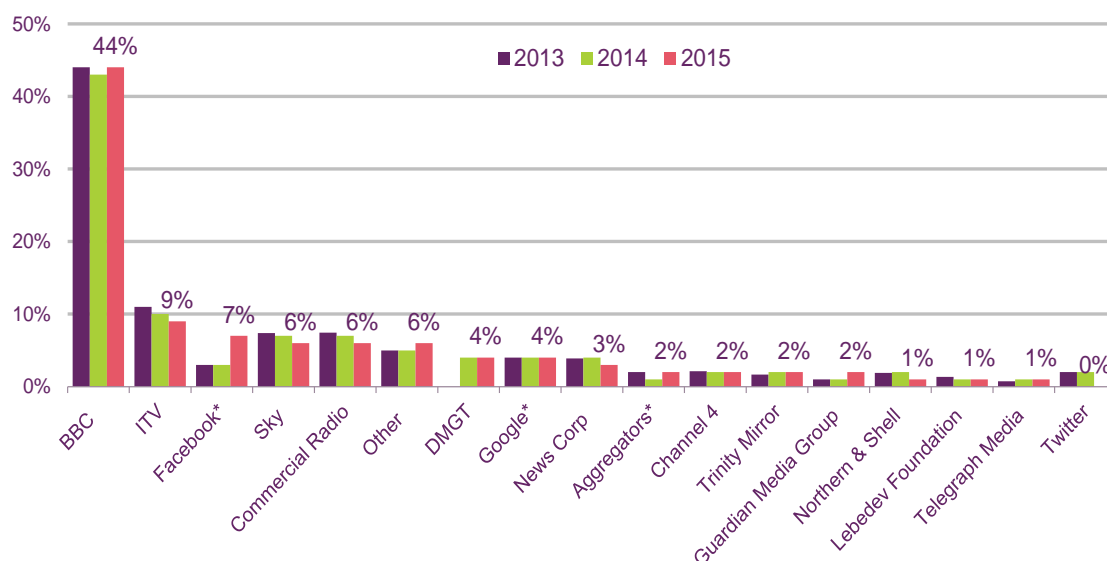
3.21 At the retail level, ITV News accounted for 9% of references in 2015 (10% in 2014).<sup>29</sup> The BBC accounted for 44% in 2015 (43% in 2014). Facebook accounted for 7% (2% in 2014). Sky News accounted for 6% in 2015 (7% in 2014) (Figure 7).

<sup>27</sup> Ofcom news consumption survey 2015.

<sup>28</sup> In our 2015 advice to the Secretary of State on a Measurement Framework for Media Plurality, we noted that although Sky News Radio provides bulletins for commercial radio stations, many commercial stations source, produce and broadcast their own news content. We, therefore, no longer consider it appropriate to aggregate all commercial radio consumption to Sky as a wholesale provider. We now consider that Global Radio is a wholesale provider of news (with a 4% share of reference), and are currently assessing the extent to which other commercial radio broadcasters (together providing a 2% share of reference) also operate as wholesale providers of news content. Global Radio is therefore presented on this chart at the wholesale level. While we assess the provision of other commercial radio broadcasters' news content, these are included within "other". This methodology has been applied to the previous data shown on the chart. Prior data is not comparable.

<sup>29</sup> Ofcom news consumption survey 2015.

**Figure 7. Share of references: retail level**



*Source: Ofcom news consumption survey 2015. Note: 'Retail' is classified as the branded title/service through which the news is provided, except for the generic categories 'commercial radio' and 'aggregators'. \*: Digital intermediaries such as those asterisked draw on content from a range of online news providers. While other retail news sources listed here may be accessed through these intermediaries, it is beyond the scope of a survey-based methodology to capture this use.*

3.22 As with reach and share, based on share of references ITV remains the second-largest provider of news after the BBC.

### **Changes in news consumption have not fundamentally undermined the rationale for the current rules related to Channel 3 and newspapers**

3.23 Despite changes in provision and consumption, the national cross-media ownership rule still plays an important role :

- ***It secures a certain level of plurality beyond the BBC:*** By requiring separation between the biggest newspaper operators and the largest commercial provider of TV news, the rule ensures a level of plurality in news provision that is greater than what would be afforded by only the BBC plus one commercial alternative.
- ***It limits the potential for a consolidated entity to exert undue influence:*** C3 news services and newspapers remain widely used and highly influential. Any consolidation between the largest news providers in the UK (ITV and News UK or DMGT) would result in an organisation with a far greater share of news consumption than any of its commercial rivals, increasing the risk that it could exert undue influence. Although the requirements for accuracy and impartiality in broadcasting offer some protection against this, there are limits to the protection they provide.<sup>30</sup>

<sup>30</sup> The Ofcom Broadcasting Code ("the Code") requires broadcasters to reflect alternative viewpoints on news items and on politically or industrially controversial or public policy issues in non-news programmes. However, the Code does not require broadcasters to cover particular issues. Therefore, broadcasters might be able to shape their editorial approach to news and current affairs by excluding



- 3.24 The appointed news provider rule also appears to be providing some benefits:
- ***It guarantees a degree of plurality in wholesale news provision:*** ITN is a major wholesale provider of news, providing competition to the BBC, Sky and newspaper groups.
  - ***It ensures that the appointed C3 news provider is of sufficient scale to compete:*** The requirement for all of the C3 licensees to appoint a single provider ensures that the operation has the scale needed to provide a high-quality service which is able to compete with the BBC.
- 3.25 Absent a requirement collectively to appoint an independent provider, it is possible that one or more C3 licensees would choose to use an alternative provider. The resulting increased competition for the business of the C3 services could encourage innovation and efficiency. On the other hand, the economic sustainability of news provision remains challenging.<sup>31</sup> Thus, the ability of the market alone to sustain the current level and quality of wholesale news provision is unproven. Any reduction in wholesale provision could reduce the range and diversity of voice. This would have implications beyond the C3 licensees, as ITN is also the provider of news services to Channel 4 and Channel 5.
- 3.26 We are of the view that the guarantee of an additional wholesale provider outweighs, at present, the potential benefits of increased competition given the context in which TV news providers operate.
- 3.27 The Secretary of State has a power to create a similar regime for Channel 5 if he is satisfied that the audience share of Channel 5 is broadly equivalent to that of C3 services. As Channel 5's audience share of TV viewing remains much smaller than that of C3 services<sup>32</sup> we do not recommend that this power is exercised at this time. Channel 5 has switched its news provider between Sky and ITN on a number of occasions during its existence.

### **The rules offer clarity and remain proportionate but are not without limitations**

- 3.28 These rules offer the benefit of providing certainty for stakeholders. The media ownership rules are set out in primary legislation which we consider to be indicative of the importance of these rules as perceived by Parliament at the time.<sup>33</sup>
- 3.29 The rules also appear to remain proportionate, restricting the same newspaper groups from owning the same C3 licensees as was the case in 2012, when we last undertook a review of the rules. Only News UK (34%) and DMGT (23%) have national newspaper market shares crossing the 20% threshold and the main C3 licensees remain ITV, STV and UTV. ITN remains the appointed news provider. We recognise that these rules are not without limitations: our advice to the Secretary of

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stories and issues. The deliberate exclusion of stories could potentially be a breach of the Code. The Code is available at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

<sup>31</sup> For example, spend on national and international news provision by the public service broadcasters dropped by 11% between 2008 and 2013. Source: Ofcom's *Third Review of Public Service Broadcasting*, published 2 July 2015, available at <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/psb-review-3/>.

<sup>32</sup> Ofcom news consumption survey 2014, published 25 June 2014, available at <http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/news-2014/>.

<sup>33</sup> However, it should be noted that the restrictions can be changed by way of the secondary legislation made by the Secretary of State.

State in 2012 on measuring plurality<sup>34</sup> observed that this requires consideration of both quantitative and qualitative factors. Setting absolute limits, as these rules do, leaves no room to take account of the broader context. Such an approach therefore creates a risk that it is not possible to address issues of commercial sustainability and innovation in an appropriate or flexible manner.

## Is the Media Public Interest Test still required?

### The public interest test allows for a wide range of potential issues to be considered

- 3.30 The Media Public Interest Test allows the Secretary of State to intervene, at his discretion, in qualifying mergers involving newspaper and/or broadcast enterprises<sup>35</sup>. An intervention triggers a review of whether the merger might be expected to operate against the public interest.<sup>36</sup>
- 3.31 The Secretary of State may take account of the following considerations in deciding whether to intervene – although he is not limited to these:
- 3.31.1 **For newspapers:** whether the merger might negatively impact on the accurate presentation of the news in newspapers; the free expression of opinion in newspapers; or the need for a sufficient plurality of views expressed in newspapers as a whole; and
- 3.31.2 **For broadcasting mergers and cross-media mergers (involving broadcasters):** whether the merger might negatively impact on the sufficient plurality media enterprises; the availability of a wide range of high quality broadcasting calculated to appeal to a wide variety of tastes and interests; or the owners genuine commitment to broadcasting standards objectives<sup>37</sup> (e.g. due accuracy and due impartiality of news; protection of those under the age of eighteen; misleading, harmful or offensive advertising).
- 3.32 In our view, the Media Public Interest Test serves as an important backstop, allowing intervention in significant mergers (invoked by the Secretary of State) without negatively impacting the relevant industries through firmer restrictions. In addition to helping to secure plurality, the Public Interest Test is also helpful to prevent undue influence and that media enterprises operate in the public interest more broadly.

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<sup>34</sup> *Measuring media plurality*, Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport, 19 June 2012 and 5 October 2012, available at:

<http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/>.

<sup>35</sup> In summary, the qualifying conditions are: if two or more enterprises have ceased or are proposed to cease to be distinct and where either the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); and / or the merger would result in the creation or enhancement of at least a 25% share of supply of goods or services of any description in the UK or in a substantial part of the UK (the share of supply test). In a "special merger situation" the Secretary of State may intervene where two or more enterprises have ceased or are proposed to cease to be distinct and one of the merging parties has an existing 25% or more share of the supply of newspapers of any description or broadcasting of any description in the UK or in a substantial part of the UK.

<sup>36</sup> Our review of the media ownership rules must consider this regime so far as it relates to such interventions "in connection with newspapers or other media enterprises". An enterprise is a "media enterprise" if it "consists in or involves broadcasting". (Section 58A(1) of the Enterprise Act 2002 (as amended). Section 44(9) provides the applicable definition of "broadcasting".)

<sup>37</sup> Set out in section 319 of the Act.

- 3.33 This power has been used three times since 2002, to look at the acquisitions of ITV shares by British Sky Broadcasting (2006), British Sky Broadcasting shares by News Corporation (2010), and Guardian Media Group (GMG) Radio by Global Group (2012).<sup>38</sup>
- 3.34 Nevertheless, we consider it important to recognise the limitations of the Public Interest Test process. Significant changes in the size and market share of large media enterprises operating in the UK may result from organic growth. As we noted in our 2010 advice to the Secretary of State on News Corporation's proposed acquisition of British Sky Broadcasting shares, there is presently no mechanism to address plurality concerns that may arise for reasons other than media mergers.

## Recommendation

- 3.35 Overall, we recommend that the national cross-media ownership rule and the appointed news provider rule are retained for now. Further we do not propose any changes to the Media Public Interest Test. Section 5 outlines our plans to take a further look at all of the rules in 18 months' time.

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<sup>38</sup> In the case of News Corporation's attempt to acquire British Sky Broadcasting in 2010, Ofcom concluded that it may be the case that the proposed acquisition may be expected to operate against the public interest and that a fuller, second-stage review should be carried out by the Competition Commission. For reference: <http://stakeholders.ofcom.org.uk/consultations/public-interest-test-nov2010/>.

## Section 4

# Preventing undue influence

## The rationale for the current restrictions

- 4.1 All broadcast services seek to influence their listeners and viewers to some extent, whether by exploring the issues of the day, by shaping our tastes in music, or by promoting certain products through advertising.
- 4.2 Parliament has put in place a number of restrictions we consider are primarily to prevent undue influence over broadcasting services:
  - 4.2.1 Advertising agencies<sup>39</sup> and political bodies, such as political parties or issue-groups, are prohibited from any holding broadcast licences.
  - 4.2.2 Local authorities<sup>40</sup> are disqualified from holding broadcast licences except to operate a broadcast service solely to provide information on their functions and services within their area.
  - 4.2.3 Bodies which receive more than 50% of their funding from UK public funds, such as some universities or museums, are disqualified from holding most radio licences but are permitted to hold all types of TV licences.
  - 4.2.4 Religious bodies<sup>41</sup> are prohibited outright from holding licences for Channel 3, Channel 5, sound broadcasting and multiplexes.<sup>42</sup> For other licence types, such as digital television programme services, community radio, digital sound programme services or digital additional sound services, Ofcom is given discretion to determine if it is appropriate for that body to hold a licence.
  - 4.2.5 The BBC, Channel 4 Corporation and S4C are prohibited from holding Channel 3 and Channel 5 licences.
- 4.3 The bodies restricted are generally those which might be expected to have a singular aim or point-of-view on matters of public policy or public controversy, such as political

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<sup>39</sup> Section 202(7), BA 1990: (a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise; (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts; (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers; (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

<sup>40</sup> "Local authority" is defined in relevant legislation as various local, district, borough, county and other area councils in Great Britain.

<sup>41</sup> Religious bodies are bodies whose objects are wholly or mainly of a religious nature, together with their officers, those they control, or are controlled by, or share a controller with, bodies corporate in which any of these have a 5% interest, and bodies controlled by one or more officers of bodies whose objects are wholly or mainly of a religious nature.

<sup>42</sup> Religious bodies are also prohibited outright from holding public teletext and analogue additional TV service licences. However, since digital switchover, such services no longer exist.

bodies, local authorities and religious bodies. Such bodies appear to have been viewed as either more likely to fail to comply with the expected standards than others or more able to exert undue influence over programming content. The restrictions on the BBC, Channel 4 Corporation and S4C are intended to secure plurality in PSB ownership.

- 4.4 These restrictions originated in the era of analogue broadcast technology when there were few channels and consumer choice was limited. In the early 1990s most consumers had access to only four television channels (BBC One, BBC Two, ITV and Channel 4), a limited number of radio stations (on FM and AM) and no news or content services on the internet.
- 4.5 Scarcity of choice meant high levels of consumption of the small number of services that existed at the time. Consequently, the degree of influence that could be exerted through such broadcast services was deemed sufficient to warrant the restrictions that Parliament put in place.

### **Have market changes reduced the influence of content services since these rules were put in place?**

- 4.6 The number of TV and radio services available has increased significantly over recent years, with 527 TV channels and 619 radio services available in 2014,<sup>43</sup> up from 376 and 372 respectively in 2005.<sup>44</sup>
- 4.7 Access to these services has also increased. Many TV and radio services are available only on multichannel/digital platforms. In early 2004 multichannel TV penetration was 57% of households.<sup>45</sup> In 2014, following the completion of digital switchover in 2012, digital TV take-up stood at 93%.<sup>46</sup> Greater take-up of digital platforms has therefore increased consumer choice by giving people access to more services than they had before. In 2008 household penetration of DAB radio had reached only 5%. By 2014 DAB radio take-up had reached 49% of households. Listening on digital platforms accounted for 37% of all radio listening in 2014.
- 4.8 Despite this, certain types of services still offer the potential to exert undue influence:
  - 4.8.1 The PSB channels<sup>47</sup> and their associated commercial (non-PSB) portfolio channels continue to account for the vast majority of TV viewing.<sup>48</sup> In return for benefits such as the licence fee (in the case of the BBC), EPG prominence<sup>49</sup> and access to DTT spectrum, these channels deliver a range of public service obligations, including high levels of news and current affairs. Audiences trust these services and consume their news programmes in large volumes. Given the scale of consumption and impact they deliver, these services continue to be vulnerable to being used as a vehicle for undue influence.

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<sup>43</sup> Ofcom Consumer Experience Report 2014, section 5.

<sup>44</sup> Ofcom Communications Market Report 2005, sections 4.4.2 and 1.2.3.

<sup>45</sup> Ofcom Communications Market Report 2004, section 4.4.

<sup>46</sup> Ofcom Communications Market Report 2015, section 2.1.

<sup>47</sup> The BBC channels; ITV, STV and UTV; Channel 4; Channel 5; and S4C.

<sup>48</sup> See Section 3 of Ofcom's Third Review of Public Service Broadcasting, published 2 July 2015, available at <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/psb-review-3/>.

<sup>49</sup> By this we mean a prominent position in the electronic programme guides on digital TV platforms that are used by consumers to discover and select the content they wish to watch or listen to.

- 4.8.2 Choice in local radio is somewhat limited. In most areas there are only one or two local commercial radio services alongside BBC local radio and community radio (with limited newsgathering resource). Such limited choice means that it may be possible to exert undue influence on local matters via such services. However, local radio operates in a wider context that includes local newspapers, and this may limit the level of influence afforded to a local radio licence-holder.
- 4.8.3 Local TV services are still at a very early stage in their development. Only a limited number of locations have a local TV service and where such a service has been licensed there is only ever one such service permitted for each city or local area.
- 4.8.4 Although spectrum scarcity no longer limits the number of television or radio services that could be accommodated for broadcast to any great extent, there are only a handful of multiplexes in existence for carrying digital terrestrial TV and digital audio broadcasting (DAB).<sup>50</sup> Multiplex operators are therefore potentially important gatekeepers because they have some control over which services they choose to make available to consumers. Such control means the potential to exert undue influence in the absence of regulation.
- 4.8.5 Similarly, although there are a vast number of TV channels and radio stations available today, on each platform there is usually only one EPG service. Because EPG services are crucial to how viewers discover and search for programming/content, they can significantly affect the viewership levels of a channel or a station. The operator of an EPG service can, therefore, potentially exert gatekeeper power similar to that of a multiplex operator.
- 4.9 Market developments alone do not therefore appear to have fundamentally undermined the rationale for restricting certain bodies from broadcasting.

### **Do other regulatory tools offer sufficient protection?**

- 4.10 Absent the disqualified persons restrictions, some degree of protection would be offered by other parts of the regulatory framework. For instance, Ofcom has an ongoing duty<sup>51</sup> to be satisfied that anyone holding a broadcasting licence is fit and proper to do so and can refuse to issue a licence to (or withdraw a licence from) anyone it cannot be satisfied is fit and proper.
- 4.11 Additionally, the Broadcasting Code contains rules which prevent anyone holding a broadcast licence from broadcasting material which: poses risks to children; incites crime; is harmful or unjustifiably offensive; or promotes or gives undue prominence to products, services and trade marks in programmes. Furthermore, anyone holding a broadcast licence must report and present news with due accuracy and with due impartiality. Matters of political or industrial controversy and public policy are also subject to rules on impartiality. Were a broadcaster to breach any of these rules then Ofcom may impose a sanction, such as a fine or licence revocation.

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<sup>50</sup> For TV, there are three PSB multiplexes, three national commercial multiplexes and one multiplex for local TV.

<sup>51</sup> Sections 3(3) and 86(3) of the Broadcasting Act 1990 and sections 3(3) and 42(3) of the Broadcasting Act 1996..

- 4.12 But there are limits to the extent to which the Code can prevent all instances of undue influence or harm. Notably, the Code applies only to what is actually broadcast and may therefore struggle to stop bias-by-omission. Broadcasters shape their editorial approach by excluding some stories or issues and focusing on others. Preventing bodies which are considered likely to have a particular viewpoint on certain issues and an incentive to exert undue influence from holding licences is one safeguard against bias-by-omission.

## **Recommendation**

- 4.13 The Disqualified Persons restrictions provide additional protection to that afforded by other regulatory tools. While changes in the market may have reduced the need for such restrictions, the likely impact on consumers of removing these rules is currently unclear. We propose to consider comprehensively in our next review whether there are undue influence concerns which necessitate retaining the current Disqualified Person restrictions. In the meantime, we do not propose any changes to these restrictions for now. Section 5 outlines our plans to take a further look at all of the rules in 18 months' time.

## Section 5

# Next steps

- 5.1 Significant changes in the pattern of news consumption and in the diversity of available news sources are taking place and that these trends are expected to continue over the next few years.
- 5.2 As a result, we consider that a comprehensive analysis of the media ownership rules will be required soon. We therefore intend to carry out our next review of the media ownership rules in 18 months' time. We will consult publicly as part of this review.
- 5.3 To determine whether the current restrictions should be preserved, amended or removed requires consideration of at least the following issues for each restriction:
  - whether the policy intent of the restriction remains valid;
  - whether the market has developed to such an extent, with sufficient number of outlets to allow room for all views to be expressed via media, that the rules are no longer required;
  - whether the policy intent can be secured by means of regulatory tools (existing or envisaged) other than an ownership restriction;
  - whether certain broadcast services merit greater protection – in the form of ownership restrictions – from undue influence and harm due to their audience reach and impact, and/or public service remit; their ability to interfere with the broadcast activities of other persons; and
  - whether restricting broadcasting by certain types of persons remains necessary and/or appropriate for securing wider public policy goals.
- 5.4 To inform our next review we intend to use the media plurality measurement framework as submitted to the Secretary of State.