

BBC Response to Ofcom's Invitation to Comment on Measuring Media Plurality

ANNEX ONE

ANNEX 1: International Comparisons

The following is based on the interim findings of work we have commissioned from consultants Communications Chambers.

Summary

- Media plurality is an important concern in major western democracies, and is in the main addressed through specific regulation which goes beyond the remit of competition rules.
- Although in some countries, media plurality regulation has been relaxed over the past decade (in the US and Australia for example), more recent trends towards industry consolidation have ensured that plurality concerns have heightened again, even in those countries which have previously loosened controls.
- Most plurality regulation has so far been applied to conventional media (broadcasting and newspapers) rather than digital media (online, mobile etc). By looking mainly at TV channels, radio stations and newspapers, it focuses on all types of media content, not just news - although supply of news and comment is clearly a key factor underpinning the rationale for media plurality regulation.
- In the countries we examined, there are typically two main approaches: first, restricting ownership/control of multiple media outlets (e.g. the number of TV channels, radio stations or newspapers that can be owned by any single entity) to ensure a range of "voices" is available in any defined market and, second, preventing large media enterprises from having excessive influence, usually with reference to some sort of audience share limit. Sometimes a combination of these approaches is used.
- In some countries, limits on numbers of outlets or audience share are fixed and cannot be breached. In others, (especially in the case of share thresholds) the limits act as a trigger for further review.
- In most countries examined, regulatory intervention is only considered in the event of a merger/acquisition which might affect plurality. It is much less common for regulators to intervene in the event of some pre-determined market share threshold being breached by a media enterprise e.g. through organic growth. Periodic reviews of media plurality do take place in some countries – although these seem to be intended to inform decisions about future ownership rules, rather than to make immediate interventions to address plurality concerns.
- Public broadcasters are normally seen as contributing to rather than threatening plurality. They are typically not affected by any restrictions on ownership/control, and are not subject to market share constraints. Their existence is taken into account, however, when determining levels of plurality acceptable in the rest of the media market.
- Overall, policy makers around the world are grappling with similar questions to those raised in the UK: how best to measure plurality, whether or not to include new digital media in any assessment, and how to achieve the right balance between clear, although arbitrary, rules and a more nuanced but less transparent discretionary approach. Few have moved beyond relatively crude media ownership rules. Few have yet worked out how to incorporate new digital media into their thinking.
- Faced with the complexities of devising a comprehensive cross-media regime, most authorities have so far retained relatively simple ownership rules, designed to deal with the specific concerns in each jurisdiction.

General aims

Media plurality is an important policy goal in most western democratic countries. As the European Commission noted in its 2007 report, “The European Union is committed to protecting media pluralism as an essential pillar of the right to information and freedom of expression”¹. In the US, the FCC is charged with overseeing media ownership rules which aim to “promote competition, localism and diversity”². In Canada, media plurality regulation aims “to preserve the plurality of editorial voices and the diversity of programming available to Canadians both locally and nationally”³. In Australia, a new independent inquiry into media regulation has recently been announced, which may revisit some of the changes to media ownership rules introduced as recently as 2006.

While specific concerns differ from country to country, reflecting the different histories and structures of each national media sector, common goals include securing a reasonable range of different “voices” across newspaper and broadcasting services either nationally or in each local market, and ensuring no single media owner has undue influence.

Competition law is typically felt to be insufficient to secure a plurality of voices in media markets. It provides a floor on top of which specific media plurality regulation needs to be built. But ensuring the media sector remains competitive is a key issue in some countries, especially where the commercial challenges facing press and broadcasters are seen to be significant. Policy makers therefore are concerned with how to strike the right balance between allowing market consolidation – which may help secure high quality media services, especially in news provision – and promoting plurality.

Approaches in practice

The most common approach to securing plurality is to place simple limits on ownership/control of multiple broadcast and newspaper outlets. These limits vary from country to country to reflect national aims and market circumstances⁴. They are intended to sustain a number of different voices in a defined market, regardless of the actual consumption of their service. They have the advantage of being simple to apply, and do not prevent organic growth by any individual enterprise.

How this is done in practice differs widely from country to country. For example, in Canada, a person or entity may only control two of the following types of media that serve the same local market: a local radio station, a local TV station, or a local newspaper. In the US, mergers are prohibited between any two or more of the main TV networks: ABC, CBS, NBC and Fox. In France, a person cannot hold more than one analogue or seven digital TV channels, and not more than two satellite TV licences. In Ireland, newspaper owners can only hold one private broadcast licence. In Italy, companies cannot own more than 20 per cent of the number of national TV channels which can be broadcast terrestrially. It is often these types of rules which have been the focus of deregulation over the past decade or more, as authorities have responded to pressures from media companies to allow them to grow via more cross-media and multi-outlet operations.

¹ Media Pluralism in the Member States of the European Union, SEC (2007) 32

² FCC’s Review of Broadcast Ownership Rules, FCC Consumer Facts, 2010

³ CRTC established a new approach to media ownership, CRTC news release, 2008

⁴ For example, in many countries the main focus is local media plurality

In some countries, the rules are more complex, and take into account audience shares as a means of trying to measure the relative importance of the different media groups. For example, in Germany, no entity can own more than 30 per cent of the national TV market, or 24.5 per cent of the print market, measured in terms of audience share and circulation.

Cross-media ownership rules are similarly framed: regulators must decide whether a company's overall share across media would suggest an influence equivalent to a TV company with an audience share of 30 per cent. In France, an entity may not be involved in activities which include more than two of the following: TV audiences of 4 million, radio audiences of 30 million, cable audiences of 6 million, or 20 per cent share of a national newspaper. While these types of rule may better reflect plurality concerns than blunter limits on number of outlets that can be owned by any one person, they are more complicated to apply in practice, and may act as a disincentive to growth if increased audiences risk triggering intervention.

In some countries the focus is on actual shareholdings rather than the enterprise itself. Limits are placed on how much (in terms of proportion of shares) of any media outlet a legal person or entity can own. In France for example, a person cannot hold more than 49 per cent of a national TV station whose annual audience exceeds 2.5 per cent of the total audience. If a person holds 2 stations, he cannot hold more than 15 per cent in the second; if he holds 3 stations not more than 5 per cent. Shareholding limits of this type may be more flexible than other approaches – in the sense that individual owners can be more easily required to sell down their shares in a particular enterprise in the event of any audience share limits being breached – but may hinder overall investment.

In some cases, rules that are expressed in terms of limits (for example on the number of outlets owned) are fixed – that is, no breach is allowed and hence no regulatory action is required. In others, although ceilings are in place, there may be provision for a review to establish whether any proposed change through a merger or acquisition could still be allowed in the public interest. The FCC, for example, must in any proposed merger/acquisition consider factors such as the financial condition of the newspaper or broadcast station and the extent to which the proposed change of ownership might secure more investment or increase local news provision in the market, alongside any potential loss of plurality.

Measurement and reviews

Our examination of current practice reveals no standard approach to measuring plurality across different countries. As noted above, many regimes avoid the issue by adopting a restriction on number of media outlets owned (which requires a political judgement to be made rather than a complicated measurement).

Where measurements are attempted, they are not very sophisticated, usually involving some sort of audience share test. But what might seem relatively straightforward soon creates challenges, most notably how to measure audience share across different media on a consistent basis. There have been only limited attempts to measure audience share across media – for example in Germany, where the authorities try to weight the influence of different media. To date, new digital media have tended to be omitted from this sort of analysis.

In the US, the FCC has attempted to address this challenge by developing a so-called “diversity index” which aims to measure the concentration of ideas in any particular market

and was developed originally to enable the FCC to decide which markets still required media ownership rules. The diversity index, based on the H-H concentration ratio approach, is calculated using as inputs the number of outlets in each medium (e.g. TV, radio, press) weighted by the relative importance (in terms of consumption) of each medium. According to its critics, however, it lacks transparency and makes questionable assumptions about the importance of different voices and media. The use of the diversity index has also been challenged extensively in the US courts.

In Europe, the European Commission in 2009 published a major study⁵ on indicators for media pluralism in member states, which aimed to provide guidance on a more coherent and consistent approach to measuring plurality in Europe, and to help provide a solid basis for determining media plurality rules in each member state. Rather than developing a single index (as did the FCC), or suggesting ways of measuring influence through audience share and reach measures, this study proposed a much more extensive framework which used a broad range of indicators (166) to identify risk to plurality across three main areas: legal and policy, social demographic patterns, and economic. This Media Plurality Monitor is meant to enable countries to audit media pluralism and highlight areas of current and potential risk, but it is far from a simple and straightforward measurement tool, and its practical application seems likely to be limited.

Even if measurement can be perfected, there remains the question of what to do with the results. As noted above, most media plurality rules are only operational in the event of a merger or acquisition which might breach specified ownership or market share limits. It is not common for regulators to intervene in the absence of such a trigger, presumably on the presumption that it would be wrong to interfere with organic market growth on a continuing basis.

Where reviews are provided for, they are intended to inform future legislative changes. For example, the FCC in the US is charged with carrying out 4 –yearly reviews of its ownership rules with a view to deciding whether or not they should remain in place or be amended. Each review is accompanied by a substantial programme of research, economic and market analysis, and public consultation. Elsewhere, reviews appear to be carried out on a more ad hoc basis, often as part of wider reviews of media regulation, as in recent years in Canada and Australia.

Public service broadcasting

In Europe, Canada and Australia, public service broadcasters are seen to play an important role in supporting cultural diversity and providing broadcasting space for minority interests and viewpoints. Some PSBs are established specifically with this in mind – for example SBS in Australia, which exists to promote cultural and multi-lingual diversity. A substantial amount of European legislation exists to underpin the special role of PSBs and their contribution to promoting diversity and pluralism, especially through the provision of independent news and analysis. Consistent with this, PSBs are not subject to the media plurality rules described above, and which are focused on private media providers.

⁵ Independent Study on Indicators for Media Pluralism in the Member States – towards a risk-based approach, Leuven, 2009

Internal plurality

Account is also taken in some countries of other regulatory constraints and the nature of the content provided by media enterprises. Broadcasters in European markets and (in some cases) elsewhere are typically subject to external regulation which requires independence, impartiality and accuracy in their news provision. In its discussion of media plurality, the European Commission has noted that such "internal plurality" should be taken into account when considering external plurality concerns⁶. In Germany for example, the regulator recently "discounted" its market share calculation in a merger case, to allow for the fact that one of the entities involved contributed to regional diversity. Newspapers traditionally tend to take a more opinionated approach. Nevertheless, even newspapers subscribe in most countries to self-regulatory mechanisms, which typically include codes of practice for their journalism. It is conceivable that in assessing plurality some allowance could also be made for the extent to which a newspaper observed an agreed journalistic code, and represented different views and perspectives in its pages.

⁶ Media Pluralism in the Member States, op cit