
The operation of the media ownership rules listed under Section 391 of the Communications Act 2003

Ofcom's report to the Secretary of State

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 requires that Ofcom review the operation of these rules at regular intervals and report on its review to the Secretary of State.

This is Ofcom's fifth such report.

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1. Executive Summary

Parliament has put in place a number of restrictions in respect of the ownership of media enterprises and broadcast licences

- 1.1 Parliament has put in place the following rules, collectively referred to as the “media ownership rules”:
- i) **the national cross-media ownership rule**, which (broadly) prevents large newspaper groups from owning a Channel 3 licence;
 - ii) **the Channel 3 appointed news provider rule**, which requires the regional Channel 3 licensees to appoint a single news provider;
 - iii) **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
 - iv) **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 Taken together, the rules are intended to protect the public interest by promoting plurality and preventing undue influence by any one, or certain types of, media owner.
- 1.3 Ofcom has a statutory duty to review, at least every three years, the operation of these rules and report to the Secretary of State on its conclusions, including recommendations for whether the Secretary of State should use any of his specific powers to change them.¹ We published our last review in November 2015.

The internet has transformed the way news is provided and consumed

- 1.4 There is now a broad range of news sources available across platforms, which has led to a fragmentation of audiences and a shift of revenue online.
- 1.5 In this increasingly competitive environment, traditional news providers (television, radio, newspapers) are pursuing a range of approaches to try and ensure they are sustainable including consolidation, cost-cutting and diversification. Newspaper providers in particular are also adopting different funding models to underpin their online news provision. These

¹ See Section 391 of Communications Act 2003.

range from membership on the basis of voluntary donations through to partial or full paywalls. No clear model for success has emerged as yet.²

Plurality concerns still exist in an online world

- 1.6 The growth in online news and the consequent increase in the range of providers has the potential to strengthen plurality and reduce the influence of any one media owner. This raises the question as to whether the media ownership rules need to change because the public policy aim behind them - promoting plurality - might be less of a concern now.
- 1.7 At present, the evidence indicates that the rise of news online has not yet materially reduced the influence of traditional news providers. These providers have established themselves online through their own websites and apps and the available evidence suggests that their content is widely consumed on third party platforms such as social media.³
- 1.8 There are also risks to plurality in an online world. Notably, a number of local newspapers have closed over the last decade while other local and national newspaper titles face challenges in remaining viable.⁴ Other risks include popular online providers such as social media and search engines influencing public opinion by controlling what new stories people see (through algorithms that manage the prominence of items in a news feed or in response to a search query). News providers are also seeking to make money from their editorial content online, for example through the adoption of paywalls, which can constrain people's access to a range of opinion.
- 1.9 The online news market is still evolving, and we recognise the potential for this to bring about significant changes in the consumption and impact of different news providers in the future. However, at the present time, we do not consider that the media ownership rules should be relaxed due to plurality being less of a concern.

² *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom's advice to the Secretary of State, May 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717994/Ofcom_PIT_TMNS_31052018_redacted.pdf

³ *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom's advice to the Secretary of State, May 2018. *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox*: Ofcom's advice to the Secretary of State, June 2017.

https://www.ofcom.org.uk/data/assets/pdf_file/0012/103620/public-interest-test-report.pdf

⁴ *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox*: Ofcom's advice to the Secretary of State, June 2017. *Mediatique, Overview of recent dynamics in the UK press market*, April 2018. Report commissioned by the Department for Digital, Culture, Media & Sport.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720400/180621_Mediatique_-_Overview_of_recent_dynamics_in_the_UK_press_market_-_Report_for_DCMS.pdf

Future changes to the media ownership regime should take into account Government and Parliamentary initiatives

- 1.10 The Government is due to publish a White Paper on internet safety this winter setting out plans to tackle harmful and illegal content.⁵ The relationship between online platforms and news publishers is another area of policy discussion. The Government's Cairncross Review reporting in early 2019, is considering this relationship and whether Government intervention is needed to ensure the sustainability of high-quality journalism.⁶
- 1.11 Given this policy and regulatory uncertainty, although it is clear that plurality cannot be considered without reflecting the online world, we do not believe that now is the right time to recommend significant changes to the media ownership rules so as to extend regulation to cover online news providers. It is important that any changes we recommend as a result of our reviews provide clarity and predictability for the long term, and are targeted and proportionate to the risks identified.
- 1.12 It is our view that the media ownership regime will need to be fundamentally reviewed once the shape of any Government intervention in this area is clearer.

We consider that the current rules continue to support the public interest by promoting plurality and helping prevent undue influence

- 1.13 For this review, we have considered whether there is a need to make targeted changes to the existing rules to address any more immediate problems in their operation. Our conclusions on each of the rules are as follows:
- **the national cross-media ownership rule** still plays an important role within the current framework. While the consumption of Channel 3 news services and printed national newspapers has declined over time, they remain widely-used and can influence their audiences. The rule continues to secure a certain level of plurality beyond the BBC and limits the potential for a consolidated entity to exert undue influence.
 - **the appointed news provider rule** also remains important. It guarantees a degree of plurality in wholesale news provision and ensures that the appointed news provider of Channel 3, the most watched source of broadcast news on TV after the BBC in the UK, is of sufficient scale to compete.
 - **the Media Public Interest Test** continues to play an important backstop role. In the last two years, the Secretary of State has referred two transactions to Ofcom: the proposed

⁵ Press release from the Department for Digital, Culture, Media and Sport: 'new laws to make social media safer', May 2018. <https://www.gov.uk/government/news/new-laws-to-make-social-media-safer>

⁶ Press release from the Department for Digital, Culture, Media and Sport: 'Chair Appointed to lead review of press sustainability in the UK', March 2018. <https://www.gov.uk/government/news/chair-appointed-to-lead-review-of-press-sustainability-in-the-uk>

acquisition of Sky plc by 21st Century Fox; and the acquisition of Northern & Shell's publishing assets, including the Daily Express, by Reach plc.⁷

- Despite the increased range of choice now available, we consider that the **categories of 'person' subject to the disqualified persons restrictions** still offer the potential to exert undue influence. There are limits to the extent to which the other regulatory tools such as our fit and proper duty and the Broadcasting Code can prevent all instances of undue influence or harm.

Recommendation

- 1.14 We consider that the case remains for the retention of all the media ownership rules in their current form for the time being and, as a result of this review, do not make specific recommendations to the Secretary of State that he should use any of his specific powers to change them.

Next steps

- 1.15 As there are dependencies with any wider policies the UK Government progress in relation to online providers, we will consider the shape and timing of our next review once the policy and regulatory context is clearer.

⁷ *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox: Ofcom's advice to the Secretary of State, June 2017; Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited, Ofcom's advice to the Secretary of State, May 2018.*

2. About this review

Legislative background

2.1 Parliament has put in place the following rules:

- i) **the national cross-media ownership rule**, which prohibits a newspaper operator with 20% or more of the market share for print newspapers from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%. The holder of a Channel 3 licence is also prohibited from holding an interest of 20% or more in a large national newspaper operator (i.e. an operator with market share of 20% or more).
- The Secretary of State has a broad power to amend or repeal this rule.
- ii) **the Channel 3 appointed news provider rule**, which requires the 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.
- The Secretary of State has the power to amend or modify this rule. He may also, if certain conditions are met, create an equivalent rule for Channel 5.
 - iii) **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. 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.
- In relation to this rule, the Secretary of State has narrow powers to: redefine “broadcasting” or “newspaper”; add new media public interest considerations to the Act or modify the ones that are there; and/or redefine the conditions under which mergers that are too small to trigger competition merger control assessment at present may still be looked at for public interest purposes.
 - iv) **the Disqualified Persons Restrictions**. Parliament has put in place the following restrictions we consider are primarily to prevent undue influence over broadcasting services:
 - Advertising agencies and political bodies, such as political parties or issue-groups, are prohibited from holding any broadcast licences.
 - Local authorities are disqualified from holding broadcast licences except to operate a broadcast service solely to provide information on their functions and services within their area.
 - Bodies which receive more than 50% of their funding from UK public funds (examples include government agencies or advisory bodies and some museums) are disqualified from holding most radio licences but are permitted to hold all types of TV licences.

- Religious bodies are prohibited outright from holding licences for Channel 3, Channel 5, sound broadcasting and multiplexes. For other licence types, Ofcom is given discretion to determine if it is appropriate for that body to hold a licence.
 - The BBC, Channel 4 Corporation and S4C are prohibited from holding Channel 3 and Channel 5 licences.
- The Secretary of State has a broad power to amend or repeal these restrictions.
- 2.2 Taken together, the rules are intended to protect the public interest by promoting plurality and preventing undue influence by any one, or certain types of, media owner.
- 2.3 Under the Communications Act, Ofcom has a statutory duty to review, at least every three years, the operation of these rules and report to the Secretary of State on its conclusions. This includes recommendations for whether the Secretary of State should use any of his specific powers to change them. We published our last review in November 2015.⁸

Context

The news landscape has changed significantly since the regulatory framework for media ownership was put in place

- 2.4 Who provides news content, how it is provided and how audiences consume it have all changed significantly since the media ownership rules were put in place in the 1990s.⁹

The internet has transformed news provision and consumption

- 2.5 Increasing take-up of faster fixed and mobile data services continue to extend people's choice over how, where and when they consume news as well as other content services. In contrast to a decade ago, most people now say they need and expect a constant internet connection, wherever they go.¹⁰
- 2.6 Driven by increased connectivity, there has been a large increase in the amount of news available through the internet. Broadcasters and newspapers have extended their news offers online and online-only news providers such as the Huffington Post and BuzzFeed have established themselves. The methods of discovering, navigating, and choosing news have also been transformed through the significant role that social media, search engines and news aggregators now play in distributing news content and driving web traffic.¹¹

⁸ See Section 391 of Communications Act 2003. Ofcom, Report to the Secretary of State on Media Ownership Rules, November 2015. https://www.ofcom.org.uk/_data/assets/pdf_file/0027/51867/morr_2015.pdf

⁹ The media ownership rules were introduced as part of the Broadcasting Act 1990 and have been amended twice since then, once in the Broadcasting Act 1996 and then into their current form by the Communications Act in 2003.

¹⁰ Two thirds of adults (64%) say the internet is an essential part of their life. One in five adults (19%) say they spend more than 40 hours a week online, up from 5% just over ten years ago. The proportion of people accessing the internet on their mobile has increased from 20% almost a decade ago, to 72% in 2018. *Ofcom Communications Market Report, 2018.*

<https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2018/report>

¹¹ *Ofcom News Consumption in the UK 2018.* https://www.ofcom.org.uk/_data/assets/pdf_file/0024/116529/news-consumption-2018.pdf

2.7 Over the last decade, cyclical economic pressures facing traditional news providers (television, radio, newspapers) have been compounded by the fragmentation of audiences online as well as a structural shift of advertising revenue from traditional media – especially print media – to the internet. A significant proportion of digital advertising revenues now flow to Google and Facebook.¹²

News providers are experimenting with a range of approaches as they seek to move towards a sustainable model

2.8 In this increasingly competitive and converged environment, the business models of traditional news providers have been – and continue to be – disrupted. Pressures have been felt most acutely at the local and regional level, with significant consolidation in local and regional media over the last decade and many groups making redundancies and closures.¹³

2.9 In 2011, following Ofcom’s 2009 review and a follow-up report, the Government removed the rules concerning: local radio service ownership; local and national radio multiplex ownership; and local cross-media ownership. Part of the rationale for removing these rules was to help ensure the sustainability of local news provision by allowing local media groups more flexibility to respond to market pressures, including through a greater degree of consolidated ownership. However, it is important to note there were other specific contextual factors concerning local plurality that informed the Secretary of State’s decision at the time.¹⁴

2.10 Looking at national trends, UK news providers have responded to the changes in the media landscape and the increased competition from online providers in a variety of ways. National broadcasters like the BBC and ITV as well as national newspapers have established their presence online. They are also adapting their operating models. For example, newspapers are pursuing a range of funding approaches to compensate for an overall loss of revenue from advertising and physical sales including paywalls and voluntary contributions. The largest provider of news in the UK, the BBC, is also developing more collaborative models of working so its news services continue to reach audiences

¹² Google and Facebook are estimated to have captured more than half of all UK digital advertising revenues in 2017. eMarketer, Digital Duopoly to remain dominant in UK ad race, September 2017 (accessed October 2018).

<https://www.emarketer.com/Article/Digital-Duopoly-Remain-Dominant-UK-Ad-Race/1016481>

¹³ Ofcom, *Local and Regional Media in the UK*, September 2009.

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/15957/lrmuk.pdf. Mediatique, *Overview of recent dynamics in the UK press market*, April 2018. Report commissioned by Department for Digital, Culture, Media & Sport.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720400/180621_Mediatique - Overview of recent dynamics in the UK press market - Report for DCMS.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720400/180621_Mediatique_-_Overview_of_recent_dynamics_in_the_UK_press_market_-_Report_for_DCMS.pdf)

¹⁴ These local factors included the Government’s then plans for local television (an aim of this policy is to support local plurality), and Ofcom judged that safeguards for local plurality would continue through the combination of the wide availability of BBC services, the public interest test, and the competition merger regime. At that time, the evidence also indicated there was very limited sectoral interest in local cross-media consolidation. Ofcom, *Response to the CMS Secretary of State: Local Media – cross media ownership rules*, August 2010.

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/74252/local_media_final_document.pdf

throughout the UK and to support the sector.¹⁵ Across all platforms, national news providers continue to cut costs, leading to radically new business models for some. For example, the Independent newspaper moved to online-only in 2016, and both the Guardian and the Observer relaunched as tabloid versions in January 2018. In November 2018, Johnston Press, one of the largest local and regional newspaper groups in the UK whose titles include the Scotsman, the Yorkshire Post and the 'i', filed for administration. It has since been acquired by a newly formed parent company, JPI Media, under a plan to try and secure the future of the newspaper group.¹⁶

- 2.11 The economic trends are also spurring a wave of consolidation globally as well as among UK media groups including those with news publishing arms. Recent examples are Comcast's purchase of Sky (including Sky News) in September 2018 and, at the start of the year, the acquisition by Reach (which owns the Mirror newspaper and other titles) of the publishing assets of Northern & Shell including the Star and Express newspapers. Other UK news providers could become takeover targets if this wave of consolidation continues, as appears likely.
- 2.12 From our review of the market evidence, the media industry, of which news forms a key part, remains in a period of uncertainty. In response to the changing landscape, news providers continue to experiment with a range of approaches, including scale-building, cost-cutting and diversification, to counteract audience and revenue declines. No clear model for success has emerged as yet.¹⁷
- 2.13 Brexit may also have a significant impact on the media sector and associated media regulation and licensing although the precise impact is difficult to predict as much will depend on the specific terms of any Brexit deal. To the extent that any media enterprises currently located in the UK may start to move more functions to Europe, this could have a long-term effect on the nature, range and diversity of the news being made available in and from the UK.

¹⁵ BBC press release on Local News Partnership, December 2017.

<https://www.bbc.co.uk/mediacentre/latestnews/2017/local-democracy-reporters>

¹⁶ BBC News, *Johnston Press: Publisher of 1 paper bough out*, 17 November 2018. <https://www.bbc.co.uk/news/business-46243622>

¹⁷ *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom's advice to the Secretary of State, May 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717994/Ofcom_PIT_TMNS_31052018_redacted.pdf

3. Findings and Conclusions

- 3.1 In the light of the changes in the provision and consumption of news since our last review in 2015, this section sets our findings and conclusions on whether:
- we should recommend changes to the overall regulatory framework for media ownership to take greater account of changing consumption habits and the growth of online news.
 - we consider the current rules, as they stand, continue to support the public interest by promoting plurality and helping prevent undue influence.

Plurality concerns still exist in an online world

- 3.2 The changes in technology and shift in audience behaviour online summarised in Chapter 2 raise the question as to whether the media ownership rules need to change because their public policy aim – promoting plurality – might be less of a concern.
- 3.3 By lowering the traditional barriers to entry to news publishing and offering a platform for different voices, online news provision has the potential to strengthen media plurality and reduce the influence of any one media owner. However, the available evidence indicates that the rise of news online has not yet materially reduced the influence of traditional providers.¹⁸ Many of the most popular news websites and apps belong to the BBC, ITV and newspaper groups and, while social media has become the most popular platform for consuming online news, most people read the news content of traditional providers when using these platforms.¹⁹
- 3.4 Social media also scores relatively poorly across all the metrics we use to measure the impact and influence of news providers.²⁰ Notably, only 39% of users of social media for news found it to be a trustworthy news source, compared to 63% of newspapers readers who trust newspapers, and 70% of viewers who trust television news.²¹
- 3.5 More broadly, our research into audience news consumption habits suggests that people tend to engage with online news in a more superficial way and can also struggle to recall

¹⁸ *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox: Ofcom's advice to the Secretary of State*, June 2017. https://www.ofcom.org.uk/data/assets/pdf_file/0012/103620/public-interest-test-report.pdf; *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom's advice to the Secretary of State, May 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717994/Ofcom_PIT_TMNS_31052018_redacted.pdf. Ofcom News Consumption in the UK 2018.

https://www.ofcom.org.uk/data/assets/pdf_file/0024/116529/news-consumption-2018.pdf

¹⁹ Ofcom, News Consumption in the UK 2018.

²⁰ Ofcom, News Consumption in the UK 2018.

²¹ Ofcom, News Consumption in the UK 2018.

the original source of a particular news story.²² Such behaviour has implications for the level of influence online news providers might have over their audiences.

- 3.6 There are also risks that plurality weakens in an online world. As set out in Chapter 2, the growth in online news has been particularly disruptive for the business model of newspapers, leading to closures and continuing to challenge the viability of some local and national titles.
- 3.7 Online news also brings new risks to plurality including the risk that social media and other online news providers such as search engines and news aggregators, acting as gatekeepers, influence public opinion by controlling what news people see (through algorithms that manage the prominence of items in a news feed or in response to a search query).²³ News providers are also developing ways to make money from their editorial content online, including through the adoption of paywalls, which can constrain people's access to a range of opinion.
- 3.8 The online news market is still evolving, and we recognise the potential for this to bring about significant changes in the consumption and impact of different news providers in the future. However, at the present time, we do not consider that the media ownership rules should be relaxed due to plurality being less of a concern.

Changes to the media ownership regime should take into account Government and Parliamentary initiatives

- 3.9 The growth in online news presents challenges to society that go beyond protecting plurality and preventing undue influence. In the UK and around the world, there is a wider debate about the role that regulation could play to address the various problems that can arise in an online environment. This includes the potential impact on the availability of pluralistic and high-quality news content but also concerns around exposure of the public to harmful content such as disinformation and 'fake news', and the undue influence this type of material might have on the democratic process, as well as privacy and security issues. While the major online players are starting to take action themselves to address these concerns, there are still many arguing for independent regulatory oversight of their activities.
- 3.10 The provision of content online that might be harmful to individuals and society is the focus of a number of policy and regulatory initiatives at national and international level. In relation to the UK, in May 2018, the Government announced its intention to publish a

²² *Navigating news in an online world*. Ofcom's commentary on its qualitative research on news, July 2018. https://www.ofcom.org.uk/_data/assets/pdf_file/0022/115951/Navigating-news-in-an-online-world.pdf; Ofcom, News Consumption in the UK 2018.

²³ *News Plurality in a Digital World*, Robin Foster, Reuters Institute for the Study of Journalism, July 2012. https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/News%20Plurality%20in%20a%20Digital%20World_0.pdf

White Paper on internet safety, setting out plans for legislation.²⁴ And during the passage of the Digital Economy Act 2017, ministers committed to a limited review into the public interest intervention regime for media mergers. The House of Commons Digital, Culture, Media and Sport Committee has published an interim report on disinformation and ‘fake news’.²⁵ Meanwhile, in the House of Lords, the Communications Committee is carrying out an inquiry titled “The Internet: to regulate or not to regulate?”.²⁶ The Labour Party has also called for greater regulation of the internet.²⁷

- 3.11 The relationship between online platforms and content publishers is another area of policy discussion. The Cairncross Review, commissioned by the UK Government and reporting in early 2019, is looking at commercial relationships between online platforms and news publishers and is considering whether there is a need to recommend government intervention to ensure the sustainability of high-quality journalism.²⁸
- 3.12 Given this policy and regulatory uncertainty, although it is clear that plurality cannot be considered without reflecting on the impact of the online world, we do not believe that now is the right time to recommend significant changes to the media ownership rules so as to extend regulation to cover online news providers. It is important that any changes we recommend as a result of our reviews provide clarity and predictability for the long term, and are targeted and proportionate to the risks identified. And it is impossible to ensure any recommendations will meet these regulatory principles in isolation, without first considering the outcomes of the Cairncross review, and without a clearer direction on the future of online regulation and any associated Government intervention concerning online platforms and news publishers.
- 3.13 Any future regulatory framework in this area will also need to strike the right balance between promoting the functioning of a healthy and informed democracy on the one hand and allowing companies the freedom to expand and to innovate on the other. This is particularly challenging in the online context where any regulation would have to be durable in a rapidly changing market.²⁹
- 3.14 It is our view that the media ownership regime will need to be fundamentally reviewed once the shape of any future online regulation is clearer, and once the Cairncross review has concluded. In the meantime, we have concentrated, in this review, on whether there is

²⁴ Press release from the Department for Digital, Culture, Media and Sport: ‘new laws to make social media safer’, 20 May 2018. <https://www.gov.uk/government/news/new-laws-to-make-social-media-safer>

²⁵ ‘Disinformation and ‘fake news’: Interim Report, House of Commons Digital, Culture, Media and Sport Committee, July 2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/363/363.pdf>

²⁶ House of Lords Communications Committee, ‘The Internet: to regulate or not to regulate? Inquiry’. <https://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/parliament-2017/the-internet-to-regulate-or-not-to-regulate/>

²⁷ FT, *Labour vows to tighten regulation of Facebook*, 24 August 2018. <https://www.ft.com/content/b3e207ce-a7a2-11e8-926a-7342fe5e173f>

²⁸ The Cairncross Review into how to secure a sustainable future for high-quality journalism in the UK.

<https://www.gov.uk/government/consultations/call-for-evidence-on-sustainable-high-quality-journalism-in-the-uk>

²⁹ Addressing harmful online content: A perspective from broadcasting and on-demand standards regulation. Ofcom, September 2018. https://www.ofcom.org.uk/_data/assets/pdf_file/0022/120991/Addressing-harmful-online-content.pdf

a need to make targeted changes to the existing rules to address any more immediate problems in their operation.

We consider that the current rules continue to support the public interest by promoting plurality and helping prevent undue influence

The national cross media-ownership continues to play an important role in protecting plurality

- 3.15 The national cross-media ownership rule prevents large newspaper groups from owning a stake in Channel 3 than is greater than 20% (including outright control) and also the holder of a Channel 3 licence from holding an interest of 20% or more in a large newspaper group. The rule should reflect a balance between two policy aims: ensuring a range and diversity of viewpoints are available in national media; and allowing companies to innovate and have sustainable businesses. The first is important for democracy because it helps encourage debate. The second benefits citizens by helping markets thrive and deliver higher quality content.
- 3.16 We consider that the national cross-media ownership rule still plays an important role in ensuring a range and diversity of views are available to the UK population. While the consumption of Channel 3 news services as well as printed national newspapers has declined over time, they remain widely-used and can influence their audiences.
- 3.17 Television continues to be the most-used platform for news nowadays by UK adults.³⁰ Reflective of the high reach of television, the news services provided by the holders of the Channel 3 licences, ITV and STV, remain very important.³¹ For TV specifically, a third of UK adults continue to watch Channel 3 news services on average each week making Channel 3, by some margin, the second most popular channel for news behind BBC One.³² Across all platforms, 41% of adults say Channel 3 news services are their most-used news source, second only to the BBC (62%).³³
- 3.18 As one of the UK's public service broadcasters (PSBs), Channel 3 services remain very influential. Audiences continue to regard them as a trusted source of news and regard the provision of news programmes which are trustworthy as the most important PSB purpose.³⁴

³⁰ Ofcom News Consumption Survey 2017, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/116529/news-consumption-2018.pdf. Due to changes we have made to the 2018 News Consumption Survey methodology, it is not possible to make direct comparisons to previous data.

³¹ ITV plc provides the Channel 3 service in England, Wales, Northern Ireland, the Border region, the Channel Islands and the national breakfast service; STV Group plc provides the Channel 3 services in northern and central Scotland. In Northern Ireland, ITV plc uses the brand name UTV.

³² Ofcom News Consumption Survey 2017.

³³ Ofcom News Consumption Survey 2017.

³⁴ Ofcom Media Nations report, 2018.

- 3.19 In relation to national newspapers, despite falling circulation and the challenges the growth in online news has brought to their business models, they remain widely read. Print copies still reach 39% of the adult population each week (20.1m people).³⁵ Combining their print and online readership, national newspaper titles reach nearly 27.4m adults or 53% of the UK population every week.³⁶ Newspapers also continue to influence the views of their readership and play an important part in a democratic society, perceived by some to have an influential role in setting the wider news agenda.³⁷
- 3.20 We consider therefore that the rule continues to secure a certain level of plurality beyond the BBC and limits the potential for a consolidated entity to exert undue influence on the most popular commercial provider of news in the UK.
- 3.21 It is feasible that the acquisition of Channel 3 by a national newspaper or Channel 3 acquiring an interest in a national newspaper may offer one way to support the sustainability of news provision and therefore promote plurality. However, we consider that, as Channel 3 and national newspapers remain significant sources of news, the national cross-media ownership rule continues to achieve the right balance in protecting plurality.

The appointed news provider rule remains important as a guarantor of plurality in wholesale news provision

- 3.22 The current news provider for Channel 3, ITN, is a major wholesale provider of news and provides competition to the BBC, Sky and newspaper groups. The appointed news provider rule therefore helps guarantee a degree of plurality in wholesale news provision. The requirement for all of the Channel 3 licensees to appoint a single provider also ensures that the operation has the scale needed to provide a high-quality service which is able to compete with the BBC.
- 3.23 Absent a requirement collectively to appoint an independent provider, it is possible that one of the Channel 3 licensees would choose to use an alternative provider. The resulting increased competition for the business of the Channel 3 news services could encourage innovation and efficiency. On the other hand, the economic sustainability of news provision remains challenging.³⁸ Changes in how people consume news, and in particular the rise of social media platforms, are putting further pressure on the traditional revenue models of commercially-funded PSB news services.³⁹ As such, we believe there would be

³⁵ IPA TouchPoints 2018 data.

³⁶ TouchPoints 2018 data. This data allows analysis of readership of newspaper brands by print and digital including the publishers' digital editions, websites and applications.

³⁷ Ofcom News Consumption Survey 2017; Ofcom *Public Interest Test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, May 2018; Ofcom, *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox*, June 2017.

³⁸ For example, spend on first-run news and current affairs provision by the public service broadcasters dropped by 10% in real terms between 2010 and 2017. Ofcom Media Nations, July 2018.

³⁹ ITN written response to Commons Disinformation and 'fake news' inquiry:

<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Culture,%20Media%20and%20Sport/Fake%20News/written/48834.html>

risks if it was left to exclusively to the market to sustain the current level and quality of wholesale news provision.

- 3.24 Any reduction in wholesale provision could also reduce the range and diversity of voice. This would have implications beyond the Channel 3 licensees, as ITN is also the current provider of news services to Channel 4 and Channel 5.
- 3.25 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 Channel 3 services. As Channel 5's audience share of TV viewing remains much smaller than that of Channel 3 services we do not recommend that this power is exercised at this time.⁴⁰
- 3.26 We consider that the appointed news provider rule remains important as it guarantees a degree of plurality in wholesale news provision and ensures that the provider of Channel 3 news is of sufficient scale to compete.

The public interest test works effectively alongside these rules and gives the Secretary of State a backstop power to intervene

- 3.27 The media public interest test allows the Secretary of State to intervene, at his discretion, in qualifying mergers involving newspaper and/or broadcast enterprises.⁴¹ An intervention triggers a review of whether the merger might be expected to operate against the public interest.⁴²
- 3.28 Since our last review in 2015, the Secretary of State has referred two transactions to Ofcom on public interest grounds: the proposed acquisition of Sky plc by 21st Century Fox and the acquisition of Northern & Shell's publishing assets, including the Daily Express, by Reach plc.⁴³
- 3.29 We consider that the public interest test continues to play an important backstop role. It allows the Secretary of State to intervene in media mergers without negatively impacting the relevant industries through firmer restrictions. Further, it allows him to take into account factors other than competition issues which may be relevant to the merger, such as the need for there to be sufficient plurality and free expression of opinion. The public

⁴⁰ Ofcom Media Nations report, 2018.

⁴¹ 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.

⁴² 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").

⁴³ *Public interest test for the proposed acquisition of Sky plc by 21st Century Fox*: Ofcom's advice to the Secretary of State, June 2017; *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom's advice to the Secretary of State, May 2018.

interest test can also help prevent undue influence and can encourage media enterprises to operate in the public interest more broadly.

- 3.30 As a regulatory tool, the public interest test is also applied in a flexible manner which takes account of wider contextual factors including market trends. These factors may act as a counterweight to any plurality concerns identified through our more quantitative assessment of the availability, consumption and impact of news sources before and after a media merger. As an example, in our public interest test of Reach’s acquisition of Northern & Shell’s publishing assets we considered the transaction in the context of the economic challenges faced by newspapers. We noted that consolidation of print publishers may offer a way to support the continued availability of newspaper titles and the range of opinions on public policy matters they represent.⁴⁴
- 3.31 The Secretary of State has powers to amend the regime either by changing the definitions of “newspaper” and “broadcaster” or by changing the grounds upon which he may intervene in a merger. We do not recommend any changes to either these definitions or the grounds for intervention at this time.

The bodies subject to the disqualified persons restrictions still offer the potential to exert undue influence

- 3.32 The bodies who are disqualified from holding the different types of broadcast licences are generally those which might be expected to have a singular aim or point-of-view on matters of public policy. Such bodies appear to have been viewed by legislators 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 public service broadcast ownership.
- 3.33 Despite the significantly increased range of choice now available to people in the UK, we consider that the categories of ‘person’ subject to the disqualified persons restrictions still offer the potential to exert undue influence.
- 3.34 Absent the disqualified persons restrictions, some degree of protection would be offered by other parts of the regulatory framework including the Broadcasting Code rules and Ofcom’s ongoing duty to be satisfied that anyone holding a broadcasting licence is fit and proper to do so. However, there are limits to the extent to which the other regulatory tools can prevent all instances of undue influence or harm. In particular, the Broadcasting 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 and the disqualified person restrictions provide protection in addition to that afforded by other regulatory tools.

⁴⁴ *Public interest test for the acquisition by Trinity Mirror plc of publishing assets of Northern & Shell Media Group Limited*, Ofcom’s advice to the Secretary of State, May 2018.

Recommendation

- 3.35 We consider that the case remains for the retention of all the media ownership rules in their current form for the time being and, as a result of this review, do not make specific recommendations to the Secretary of State that he should use any of his specific powers to change them.

Next steps

- 3.36 As there are dependencies with any wider policies the UK Government progress in relation to online providers, we will consider the shape and timing of our next review once the policy and regulatory context is clearer.