



# Measuring media plurality

Ofcom's advice to the Secretary of State for Culture,  
Olympics, Media and Sport

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## Section 1

# Executive summary

- 1.1 In October 2011, Jeremy Hunt MP, the Secretary of State for Culture, Olympics, Media and Sport asked Ofcom to answer five questions relating to media plurality.
- 1.2 This request followed Ofcom's consideration of plurality in relation to the proposed NewsCorp/BSkyB transaction (the Public Interest Test) published in December 2010. Our report on that proposed transaction suggested that the existing framework for considering plurality might no longer be equipped to achieve Parliament's policy objective.
- 1.3 In answering the questions, which are summarised below, we first considered the underlying goals of plurality, its definition and scope:
  - Plurality matters because it makes an important contribution to a well-functioning democratic society through informed citizens and preventing too much influence over the political process.
  - We have defined plurality as a) ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and b) preventing any one media owner or voice having too much influence over public opinion and the political agenda.
  - Plurality needs to be considered both within organisations (i.e. internal plurality) and between organisations (i.e. external plurality).
  - In terms of scope, a review of plurality should be limited to news and current affairs but these genres should be considered across television, radio, the press and online.
- 1.4 An effective framework for measuring media plurality is likely to be based on quantitative evidence and analysis wherever practical. However, there are also areas where a high degree of judgement is required. The appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine.

## Ofcom's answers to the 5 questions

- 1.5 *What are the options for measuring media plurality across platforms? What do you recommend is the best approach?*
  - There are three categories of metrics relevant to measuring media plurality: availability, consumption and impact. All should be included in a review of plurality, but the consumption metrics, especially reach, share and multi-sourcing, are the most important.
  - In addition to metrics, other relevant contextual factors should be considered, for example governance and regulatory frameworks such as those which ensure impartiality.
  - Given the dynamic nature of the news market, the metrics framework itself should be assessed during each review to ensure its continuing efficacy and relevance.

1.6 *Could or should a framework for measuring plurality include websites and if so which ones?*

- Online news, in a wide variety of forms, is used by a significant and rapidly growing proportion of the UK population. It is a dynamic and diverse sector. Online should be included in a plurality review.

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

- We have considered the merits of different potential triggers for a plurality review, in the absence of a merger. On balance, we believe a periodic review every four or five years provides the best approach. We do not believe reviews should be triggered by metrics or complaints, nor do we believe there should be scope for discretion to trigger a review between the fixed periodic reviews.
- In addition, there may be merit in an “exit trigger” (i.e. a plurality review being triggered by the exit of a news organisation) but only if a mechanism can be designed that avoids subjecting the market to continuous review, and avoids too heavy a reliance on discretion. The need for such a trigger will also depend on the frequency of the periodic reviews.
- Further consideration is required to determine whether the existing merger process would sit within a new proposed plurality regime or continue in parallel with it. Either scenario may be desirable but the regulatory framework needs to be consistent and avoid a double jeopardy outcome such that more than one plurality review is triggered by the same cause.

1.8 *Is it practical or advisable to set absolute limits on news market share?*

- Absolute limits could take the form of a prohibited share or a prohibited transaction.
- A prohibited share would provide the clarity of a simple binary rule. However, setting absolute limits leaves no room to take account of the broader context, and this creates a risk that it is not possible to address issues of commercial sustainability and innovation in an appropriate manner. On balance, we do not believe introducing a prohibition on share to be advisable currently.
- The only prohibited transactions currently are those subject to the “20/20” rule. This prevents an organisation with more than 20% of national newspaper circulation from holding a share of 20% or more in a Channel 3 licence or licensee. The case for retaining or removing it in the context of a new proposed plurality regime (including the existing merger framework) needs to balance the benefits of clarity and certainty on the one hand versus flexibility on the other. We believe it is for Parliament to decide where this balance should be set.
- Any review of plurality needs to consider what level of plurality is sufficient. However, an assessment of sufficiency at any point in time is challenging as it requires a subjective judgement – there is no analytic test analogous to the economic criteria used in competition analysis, and no single accepted measure for plurality nor consensus as to where the level should be set. Further, it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and notions of sufficiency change.

- A first step could be to describe sufficiency in qualitative terms. We believe the features of a plural news market would include many or all of the following: a diverse range of independent news voices; high overall reach and consumption with consumers actively multi-sourcing; sufficiently low barriers to entry and competition to spur innovation; economic sustainability and no single organisation accounting for too large a share of the market.
- It may also be possible to develop a view as to what levels of the key consumption metrics provide an indication of a potential plurality concern, so that these levels are taken into consideration within a plurality review, without being regarded as absolute limits.
- It will be for Parliament to consider whether it can provide any further guidance on how sufficiency should be defined, and possibly, in so doing, the extent to which the current level of plurality delivers against this. Absent such guidance, this may have to be left to the discretion of the appropriate body empowered by Parliament to undertake any plurality reviews.

1.9 *Whether or how should a framework include the BBC?*

- The BBC has a leading position in television, radio and online news and should be included in any plurality review. On the basis of a new proposed plurality regime involving periodic reviews, with the BBC included in such reviews, there is no separate need for the BBC's position itself to trigger a review.
- Given the BBC's significant presence in news, and the pressures it faces to consolidate its newsgathering operations in order to deliver savings, we recommend the BBC Trust assesses the BBC's contribution to plurality, both internal and external, and considers establishing a framework for measuring and evaluating this periodically.

## Section 2

# Introduction

### The Secretary of State's questions on media plurality

- 2.1 In October 2011, Jeremy Hunt MP, the Secretary of State for Culture, Olympics, Media and Sport asked Ofcom to provide advice on the feasibility of measuring media plurality across platforms (See Annex 1). He requested answers to five questions:
- What are the options for measuring media plurality across platforms? What do you recommend is the best approach?
  - Could or should a framework for measuring plurality include websites and if so which ones?
  - What could trigger a review of plurality in the absence of a merger, how might this be monitored and by whom?
  - Is it practical or advisable to set absolute limits on news market share?
  - Whether or how should a framework include the BBC?
- 2.2 The Secretary of State referred to two further considerations in his request: (i) incentives to invest and innovate and (ii) how the current media plurality public interest test could be extended to address organic growth or market exit.
- 2.3 This followed Ofcom's consideration of plurality in relation to the proposed News Corporation/BSkyB transaction (which we refer to in the rest of this document as the PIT (Public Interest Test) report<sup>1</sup>). We concluded that this transaction may have been expected to operate against the public interest and that it should be referred to the Competition Commission for a more detailed review.
- 2.4 News Corporation offered undertakings in lieu ("UILs") of a reference to the Secretary of State<sup>2</sup>. The Secretary of State asked Ofcom to advise him on whether the proposed UILs met the plurality concerns identified in our report and asked the OFT to advise him on their practicability<sup>3</sup>. After a period of negotiation and public consultation, during which News Corporation made changes to the UILs it was prepared to offer, Ofcom and the OFT recommended on 22 June 2011 that the UILs be accepted<sup>4</sup>. Before the Secretary of State came to a decision, however, News Corporation withdrew first the proposed UILs and then its offer to acquire the shares in BSKyB.

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<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf>

<sup>2</sup> [http://www.culture.gov.uk/images/publications/News\\_Corp\\_revised\\_undertakings\\_24\\_Jan\\_11.pdf](http://www.culture.gov.uk/images/publications/News_Corp_revised_undertakings_24_Jan_11.pdf).

<sup>3</sup> [http://www.culture.gov.uk/images/publications/JeremyHunt\\_Statement\\_25JAN2011.pdf](http://www.culture.gov.uk/images/publications/JeremyHunt_Statement_25JAN2011.pdf);  
[http://www.culture.gov.uk/images/publications/SoS\\_Ofcom\\_27\\_01\\_11.pdf](http://www.culture.gov.uk/images/publications/SoS_Ofcom_27_01_11.pdf);  
[http://www.culture.gov.uk/images/publications/SoS\\_OFT\\_27\\_Jan11.pdf](http://www.culture.gov.uk/images/publications/SoS_OFT_27_Jan11.pdf).

<sup>4</sup> [http://www.culture.gov.uk/images/publications/Ofcom\\_to\\_SoS\\_further-advice-UIL\\_220611.pdf](http://www.culture.gov.uk/images/publications/Ofcom_to_SoS_further-advice-UIL_220611.pdf);  
[http://www.culture.gov.uk/images/publications/OFT\\_report\\_sent\\_toSoS\\_220611.pdf](http://www.culture.gov.uk/images/publications/OFT_report_sent_toSoS_220611.pdf).

- 2.5 We also recommended within our PIT report that the UK Government consider undertaking a wider review of the statutory framework. Future market developments explored in the report suggested that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. These market developments include the risk of market exit by current news providers, or a steady, organic growth in audience shares and increase in the ability to influence by any one provider.
- 2.6 The Secretary of State asked that we provide our advice to the Leveson inquiry by June 2012, and as an input into the Government's Communications Review. We note we have also submitted evidence to the inquiry of the UK Parliament's Culture Media and Sport Committee into media plurality.

## Our methodology and approach

### Methodology

- 2.7 This document takes into account our duties and the research and analysis we have undertaken, as set out below.
- **Goals and scope of plurality:** Our advice has been informed by considering the goals of plurality, its scope, and the means to achieve it.
  - **Market context:** We have commissioned consumer research from Kantar Media on both claimed behaviour and attitudes towards news. We also asked Mediatique to describe the news value chain, setting out the flow of funds, future dynamics and their implications.
  - **International case studies:** We have examined international case studies to understand what we can learn from other countries about their approaches to protecting plurality.
  - **Review of academic thinking.** Many aspects of plurality have been studied by the academic community. We have prepared a high-level summary of selected academic literature. We attended two academic workshops organised by the Arts and Humanities Research Council and chaired by Professor Steven Barnett<sup>5</sup>.
- 2.8 During this process, we issued an Invitation to Comment on the questions that we have been asked by the Secretary of State<sup>6</sup>. This closed on 18<sup>th</sup> November 2011.
- 2.9 We received around 50 responses from organisations and individuals. These included submissions from the BBC, BSkyB, the Campaign for Press and Broadcasting Freedom, Global Radio, the Guardian Media Group (GMG), ITN, News Corporation, and the Newspaper Society. We also received a large number (c45,000) of responses from individuals as part of online campaigns by Avaaz and 38 degrees.
- 2.10 We published the non-confidential responses on our website. We met with all those organisations who requested an opportunity to discuss their submissions, namely: Associated Newspapers, the BBC, BSkyB, GMG and the Newspaper Society.

<sup>5</sup> These sessions were held at Ofcom's offices on the 1st and 15th March 2012.

<sup>6</sup> <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/>



## Overall approach

- 2.11 This report represents Ofcom's independent advice on the questions we have been asked. In providing that advice we are conscious that an effective framework for considering media plurality is likely to be based on quantitative evidence and analysis where this is practical, but that there are also important areas where a high degree of judgement is required. The appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine.
- 2.12 Where we have provided specific advice or recommendations we have endeavoured to ensure that it adheres to the following principles:
- **Proportionality** - Any additional regulatory interventions are kept to the minimum necessary to achieve the objectives.
  - **Transparency** - The framework should be clear and predictable for stakeholders.
  - **Simplicity** - Metrics and frameworks need to be as simple as possible.
  - **Practicability** - Actions and processes must be straightforward to implement.
- 2.13 A theme that runs through this report is the need to ensure that the regulatory approach to plurality remains fit for purpose in the face of a media market that is increasingly converged, with distinctions between platforms blurring, and online growing in importance. We have been mindful in making our recommendations that traditional platforms remain important today as a potential means of influencing public opinion. But this report also recognises the growing influence of online as a destination for news and as the main driver of innovative convergent media products.

## Section 3

# Why media plurality matters

3.1 The Secretary of State's questions relate primarily to the measurement of plurality and the process for triggering a review in the absence of a merger. However, to address these questions effectively we require an understanding of the underlying goals of plurality, a working definition of the term, and its scope in relation to genres and the media value chain.

### Public policy goals of media plurality

3.2 Plurality is not a goal in itself but a means to an end. Parliamentary debate during the passage of the Communications Act 2003 provided an indication of the intended goal of media plurality:

- In opening the debate on the Communications Bill in the House of Lords in 2002, Baroness Blackstone explained that one of the main purposes of the legislation was to *"ensure the existence of a range of media voices, safeguarding the vibrancy of democratic debate"*.<sup>7</sup>
- During Committee stage in the Lords, Lord Puttnam said, *"our key aim is to ensure that there is a range of competing voices available to citizens so that they are free to form their own opinions"*<sup>8</sup>.
- Lord MacIntosh of Haringey, the relevant Government Minister, subsequently said that: *"[media] plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda"*<sup>9</sup>.

3.3 Today, the political debate remains broadly the same. For example:

- Jeremy Hunt MP, Secretary of State for Culture, Olympics, Media and Sport, reflected on media plurality in his speech at last year's RTS Cambridge Convention: *"A country's character, the unique bonds that define its society and its democratic institutions are all shaped by its media. So we need to take special care to ensure we have vibrant, free – even raucous – debate. We need to ensure that there is the opportunity for multiple voices. And we must take care that power is never over-concentrated in a few hands"*<sup>10</sup>.
- This was echoed by Ed Vaizey MP, Minister for Culture, Communications and Creative Industries: *"It is important for the media to reflect different viewpoints at national level and to safeguard democratic debate"*<sup>11</sup>.

<sup>7</sup> Hansard: <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo021120/text/21120-05.htm>

<sup>8</sup> Hansard: <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030605/text/30605-01.htm>

<sup>9</sup> Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard.

<sup>10</sup> [http://www.culture.gov.uk/news/news\\_stories/8431.aspx](http://www.culture.gov.uk/news/news_stories/8431.aspx)

<sup>11</sup> Westminster Hall debate on regulation of media ownership, 14 September 2011.

- 3.4 In forming our view on the goals of plurality - drawing on the political (and academic) debate, and our research and analysis - we have seen no reason to divert from this consensus.
- 3.5 Accordingly, we have concluded that plurality contributes to a **well-functioning democratic society** - through the means of:
- i) **Informed citizens** - able to access and consume a wide range of viewpoints across a variety of platforms and media owners.
  - ii) **Preventing too much influence over the political process** – exercised by any one media owner.
- 3.6 The focus of our work is the first of these (informed citizens) given that the first goal also helps mitigate the second (influence over the political process). We also note that the first goal is more aligned to our current duties to further the interests of consumers and citizens in relation to communications matters.
- 3.7 We note that there is a distinction to be drawn between the potential capacity to influence and external constraints on that capacity. In many cases, there are constraints on the actual ability to exert power, such as regulation that secures impartiality or the compact that places obligations on the public service broadcasters in return for implicit subsidies. We expand on these points below as part of the regulatory context.

### What we mean by plurality

- 3.8 **Based on the public policy goals highlighted above, and consistent with precedent, we have defined plurality with reference to desired outcomes of a plural market:**
- Ensuring there is a **diversity of viewpoints** available and consumed across and within media enterprises.
  - Preventing any one media owner or voice having **too much influence** over public opinion and the political agenda.
- 3.9 The Competition Commission (CC) has taken the concept of plurality of persons with control of media enterprises to refer “*both to the range of and the number of persons with control of media enterprises*”<sup>12</sup>. This was endorsed subsequently by the judgment of the Court of Appeal: “*The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well*”<sup>13</sup>.
- 3.10 We note that a diversity of viewpoints can be formed *within* an organisation and *between* organisations. Both are relevant to the question of plurality; throughout this report, we refer to these as internal and external plurality respectively - which we defined in our PIT report as set out below.
- **External plurality:** the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda.

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<sup>12</sup> Paragraph 5.7 of the Competition Commission report in BSkyB/ITV.

<sup>13</sup> Paragraph 90 of the Court of Appeal judgment.

- **Internal plurality:** how far the range of views expressed within media enterprises may ensure sufficient plurality, including the effects of the impartiality rules for broadcast news, the culture of newsrooms and audience expectations.

## The scope of media plurality

### a) Genres

- 3.11 A variety of genres are potentially relevant to media plurality, and it is important to provide clarity as to which of these are included within the scope of any review process. In their plurality reviews to date, Ofcom and other regulatory authorities have focused on news and current affairs but are not required by the current regulatory framework to do so<sup>14</sup>.
- 3.12 In the context of this report, we note that the Secretary of State's questions also guide us towards news, in that we have been asked whether it is practical or advisable to set absolute limits on news market share. In the Q&A at RTS Cambridge he said his *"instinct is to restrict discussions about media plurality to news provision on the grounds that competition law works well and we have other interventions such as the licence fee...news is incredibly important, that is why it would be my primary focus"*.
- 3.13 There are arguments for broadening this scope:
- Respondents to our Invitation to Comment highlighted other relevant content types. The BBC said *"drama, comedy and factual formats can play a role, alongside news and current affairs, in helping condition the political discourse. These genres contribute to the way we see ourselves as a society"*. But the BBC concluded by recognising that news and current affairs were likely to be the focus of our work.
  - We note from our research into international case studies, a number of jurisdictions (such as Germany, France, Norway) carry out their analyses on media content in the broadest sense and do not attempt to measure or regulate particular genres.
- 3.14 **However, we remain of the view that news and current affairs play the primary role in delivering the public policy goals set out earlier.**
- The unrestricted dissemination of a diverse range of information, opinions and arguments about the day's news and events provides the greatest potential to inform citizens and ensure an effective democratic process.
  - From a consumer's perspective, news ranks highest in both societal and personal importance. Current affairs also plays an important role in providing consumers with information and analysis and therefore in the development of public opinion<sup>15</sup>.

<sup>14</sup> The definition of "newspapers" presupposes some news content, but "media enterprise", includes all broadcast licensees. The Secretary of State's *Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers* (May 2004) suggests intervention on public interest grounds in relation to mergers involving education or music channels (para 8.8).

<sup>15</sup> See Ofcom PIT, Figure 4.

- There are practical and proportionate rationale for focusing on news and current affairs. Practically, the genre of news and current affairs is readily categorised on television and online audience measurement systems. The term is also easily understood by respondents in consumer research. Even if one could measure other genres to the same degree, we believe it would be less proportionate to do so.
  - The issues of practicality and proportionality are of particular significance given the increasingly important role of online, and the potential inclusion of online in any review of plurality. As we discuss further below, the inclusion of online is likely to present significant practical challenges, and these will be exacerbated if there is no restriction as to the type of content that is to be captured.
- 3.15 Other forms of content and broader definitions may be relevant in certain contexts, but we do not propose to consider these at this stage. We note that Parliament may wish to take a broader view in the future.
- 3.16 **We believe news and current affairs are the most relevant forms of content for the delivery of the public policy goals. We recommend that the scope of any plurality review should be limited to these.**

#### b) Geographic scope

- 3.17 This report considers plurality primarily in the context of a UK-wide news media market. We acknowledge that the conclusions may vary at the level of the devolved nations, and in relation to local media. Further work may be required to consider how a new framework would apply to these geographies, and this work would need to take into account the specific circumstances which apply in each case.

#### c) The value chain for the supply of news

- 3.18 The value chain for the supply of news is complex. For example, content might be originated by one company (e.g. a newswire such as Reuters), aggregated by another (e.g. a wholesale news provider such as ITN), and made available to citizens by yet another (e.g. a broadcaster such as Sky).
- 3.19 The question arises as to where in this value chain we are most concerned about media plurality. This is an issue that arose in the PIT, where we considered both the wholesale and the retail supply of news<sup>16</sup>. In that context, focusing on retail services risked overstating the diversity of news sources used by people - if the point of editorial control was exercised at the wholesale level. However, focussing on wholesale loses the intricacy of the different titles, brands, outlets and platforms offered by different providers. It also risks ignoring the value added by editorial control downstream in the value chain. We therefore published metrics for both of these points in the value chain, and then assessed them in the round in reaching our conclusions.

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<sup>16</sup> Consumers are provided news content by channels and publishers from two main sources: content produced in-house (retail content); and content sourced from third parties (wholesale content). For example, ITV and Channel 4 source news content and programming from ITN. ITN acts as a 'wholesale' news provider, while ITV and Channel 4 can be considered as the 'retailer'. The BBC and national newspaper groups on the other hand produce a significant amount of news content in-house, fulfilling both wholesale and retail roles.

- 3.20 We note that the value chain is likely to continue to evolve; as, for example, new types of online aggregators become more significant.
- 3.21 **We recommend that flexibility is required to consider at which points in the value chain editorial control is most likely to be exercised, and therefore how best to measure diversity and influence.**

### **What would a plural outcome look like?**

- 3.22 Combining the outcomes set out above and in paragraphs 3.5 and 3.8 in particular, there are several features that would characterise an ideal plural outcome:
- There is a **diverse range of independent news media voices** across all platforms.
  - Overall **reach and consumption is relatively high** among all consumer demographics and across all of the UK's nations and English regions.
  - **Consumers actively multisource** - such that the large majority of individuals consume a range of different news sources.
  - Sufficiently **low barriers to entry** and competition between providers spurs quality and innovation in the gathering and dissemination of news.
  - Overall **investment and commercial returns** are sufficiently high to ensure sustainability, and guarantee high quality coverage, extensive newsgathering and investigative journalism.
  - No organisation or news source has a **share of consumption** that is so high as to create a risk that consumers are exposed to a narrow set of viewpoints.
- 3.23 In practice there will be some trade-offs between these features, such that they may not all be achievable in practice. For example, as discussed in more detail below, the desire to ensure that no organisation has too high a share of consumption may in some circumstances conflict with the requirement for commercial sustainability.

## Section 4

# The market and regulatory context

## The market context

4.1 We have drawn on a broad range of sources in the course of our analysis. In particular, we have commissioned consumer research from Kantar Media on both claimed behaviour and attitudes towards news and current affairs. We also asked Mediatique to describe the news value chain, setting out the flow of funds, future dynamics and their implications.

### Supply of news

4.2 People in the UK have access to content from a wide range of news providers – from the BBC and Global Radio to News International and Google - and from these providers there are an even larger number of news services and titles. For reference, we provide a summary of the major news providers in the UK and their titles in Annex 2.

### Consumption of news

4.3 Platforms play different roles in people's lives – such as delivering an immersive audio-visual experience, breaking news, detailed analysis, and providing space for hearing and contributing to the debate. Therefore TV, Radio, Newspapers, Online should not be seen as direct substitutes; rather, they complement each other in many ways.

4.4 Our qualitative consumer research highlighted the main characteristics of each platform, as follows:

- **TV** is a powerful platform because it is immersive and can show consumers the news as it unfolds, lending realism – ‘the camera doesn't lie’. Furthermore, TV has a regulatory obligation to be impartial. Viewers perceive TV as providing a level of transparency, which in turn lends the platform trust and credibility.
- **Radio** is a convenient medium for news that can be listened to whilst doing something else. The phone-in/debate feature of some stations/programmes helps to make news and current affairs accessible and relevant, offering listeners the opportunity to engage and debate.
- **Newspapers** provide space for in-depth analysis, and reflection on events, helping citizens understand issues. Newspapers may be less relevant than other platforms for up-to-the-minute news, although they do still play an important investigative function in breaking stories. Most newspapers have clear and distinct editorial positions and the tabloids in particular are seen as partial and headline-grabbing. They also offer broader entertainment than news alone.
- **Internet** is growing in popularity as a source of news. Among users, the internet is felt to provide the ultimate convenience which drives use. It also allows users to tailor consumption to their own news interests. Within online, **social media** is becoming a valuable source for breaking news in its ‘word-of-mouth’ role, as many users learn of breaking news through friends' posts. It also offers a space for citizens to contribute to the story or debate with others.

#### 4.5 Our quantitative consumer research highlighted the following patterns of consumption.

- TV remains the most used and important platform:** Nearly all (95%) of the UK population uses one or more of the four main platforms for news, with TV being the most popular. 85% say they use TV, 53% say they use newspapers, 53% say they use radio, and 41% say they use the internet. When asked how important each platform is as a source of news, consumers rate TV as the highest (with the average score of 7.7 out of 10). Newspapers, online and radio are perceived by consumers to be broadly similar in terms of importance (ranging from 6.9 to 7.2).
- Significant growth of online:** Online services are currently used for news by a smaller proportion of the population than each of television, newspapers and radio. However, online news use is steadily growing - 41% of UK adults use the internet for news 'nowadays', representing a broad upward trend from 27% who 'ever used' it in 2007 and 15% who 'ever used' it in 2002.
- Multi-sourcing:** The average number of sources consumers use for news is 4.8, drawn from 2.4 platforms. Taking these in turn, among people who consume news nowadays 8% use only one *source* (of which 77% use only the BBC), 15% use two sources, and the remaining 77% use three or more sources. 14% of people who consume news only use one *platform*, with 10% of people using only TV. The main reason for multi-sourcing is convenience, although over one-quarter of people do this to gain a range of different viewpoints on a story.

**Figure 1: Headline consumption measures for news media**

News Metrics	Total	TV	Newspapers	Radio	Internet
% of all adults use nowadays	95%	85%	53%	53%	41%
% of all adults use daily	88%	71%	30%	41%	29%
Average number of platforms used	2.4	-	-	-	-
Perceived importance of platform (mean score)	-	7.7	6.9	7.2	7.1
Average number of sources used (amongst those who use at least one)	4.8	2.2	2.2	1.4	2.0
Top 5 sources used nowadays (by reach)	BBC One ITV Sky News BBC News BBC Website	BBC One ITV Sky News BBC News Channel 4	The Sun The Daily Mail The Daily Mirror Mail on Sunday Sunday Mirror	BBC Radio 4 BBC Radio 2 BBC Radio 1 Heart FM Capital FM	BBC Web Facebook Google Sky News web Guardian web
Cross-media Share of References	100%	44%	11%	24%	21%
Use BBC for news nowadays (% all adults)	81%	72%	-	39%	23%
BBC Share of References by platform (Wholesale)	47%	56%	-	69%	29%

**Source: Kantar Media report for Ofcom, April 2012.**

**Note 1:** Cross-media share of references - developed through bespoke quantitative research as a cross-media measure of news consumption that looks at all sources of news used across the four main platforms (TV, radio, newspaper, online). The measure was developed by Ofcom for the PIT report. Consumers were asked which sources of news they use for each of the main platforms. The references to each individual source mentioned were then aggregated across all platforms and expressed as a share of the total responses. This produced a cross-media share metric with consistent methodology and a consistent definition of news across all platforms. Results can be expressed in a number of ways, including wholesale provider, cross-media brands, platform aggregations etc. As part of this work, Kantar Media have updated it to also take account of the frequency of



consumption. **Note 2:** Selected data on the BBC has been included as their role relates to a specific question that we have been asked and to which we respond at end of Section 5.

- 4.6 Alongside our bespoke quantitative research, we have consulted other evidence. These include the industry measurement systems (BARB etc), responses to our invitation to comment, academic literature, and testimony from the Leveson Inquiry. Taking all of these into account, in our judgement, television and newspapers have historically had the most impact on public opinion, and continue to do so today, but for differing reasons.
- **TV:** Television is by far the most consumed and the most trusted medium. Our qualitative research highlights that consumers are attracted to its immersive audiovisual qualities that bring stories to life. Further, it is required to be impartial.
  - **Newspapers:** Industry data point to a gradual decline in readership; consumer research (Figure 1) suggests that the importance consumers attach to newspapers is comparable to radio and internet, and their daily reach is lower than radio. However, newspapers continue to play an important role in news dissemination. Millions routinely read them and they provide space for opinion, in-depth analysis and a reflection on recent events.
  - Other, non-quantitative factors point to the continued significance of print media. Their ability to be *partial*, combined with the power of the written word (and headlines in particular) gives this medium in our view significant impact and influence. Historically newspapers have also played a role in setting the day's agenda for other media to draw from and they are – and are likely to remain in some form - a crucial component of the symbiotic relationship between the different mediums in the news value chain. The ongoing Leveson Inquiry has also provided relevant context in describing in some detail the relationships between press, the public, police and politicians.
- 4.7 TV and newspapers continue to play an important role today, but we note the emergence of **online** as a destination for news content, which is likely to play a major future role in converging media. Online news distribution provides both immediacy and depth to news content, combining text, graphics, images, audio and video. It is available on an ever-increasing range of devices, fixed and mobile. Coupled with navigation tools (such as search and recommendation engines), online provides the public with convenient access to news content which is of most relevance to them.

## The regulatory context

### Ofcom's duties

- 4.8 In the carrying out of its functions, Ofcom is required to secure “the maintenance of a sufficient plurality of providers of different television and radio services”<sup>17</sup>.
- 4.9 There are essentially two approaches to achieving this duty:
- Measures which are defensive in nature, and prevent actions taking place which would reduce media plurality. These include the existing regulatory framework governing media mergers, media ownership and broadcast standards.

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<sup>17</sup> S.3(2)(d) Communications Act 2003.

- Positive mechanisms to promote media plurality - such as the current PSB obligations secured in return for implicit subsidies (as set out in Annex 3). These are likely to be particularly important in circumstances where the desired level of media plurality may not be commercially sustainable, and include the provision of news by public service broadcasters.

### Media mergers

- 4.10 Currently, certain mergers may be subject to intervention on media public interest grounds. There are threshold tests based on turnover and share of supply or demand, but there is no requirement that turnover be generated from the “public interest” activity; nor that the supply of goods or services which triggers jurisdiction be the supply of goods or services which raises the public interest concern<sup>18</sup>.
- 4.11 There are two “plurality” media public interest considerations: plurality of views in newspapers and plurality of persons with control of media enterprises<sup>19</sup>. The statutory definition of “media enterprise” does not include providers of internet content or wholesalers of broadcast content who do not hold the broadcast licence.
- 4.12 A public interest review of a merger is triggered by an intervention notice issued at the discretion of the Secretary of State<sup>20</sup>. He needs reasonable grounds to suspect that a specific public interest concern may be “relevant” to the merger.
- 4.13 If the intervention specifies a “media” public interest consideration, Ofcom must report to the Secretary of State on whether, having regard only to the public interest consideration he has raised, it is or may be, the case that the merger may be expected to operate against the public interest. Competition assessment takes place separately.
- 4.14 Once Ofcom has reported in accordance with the intervention notice, it is for the Secretary of State to determine whether or not the merger should be referred to the CC for further review of plurality concerns and, if necessary, consideration of remedies. Once the CC has reported, the final decision on whether there is a plurality concern and, if so, on remedies overall is for the Secretary of State.
- 4.15 Since the current framework was established, there have been media public interest interventions in only two cases: *Sky/ITV* and *News Corporation/Sky*. In both cases, the public interest consideration concerned was “*the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience*”.

### Controls on media ownership

- 4.16 The main remaining ex-ante statutory restrictions on media ownership are<sup>21</sup>:

<sup>18</sup> The thresholds are in s.23 and s.59 Enterprise Act 2002.

<sup>19</sup> S.58(2B) and (2C)(a) Enterprise Act 2002.

<sup>20</sup> Depending on the type of merger – EC, UK or special (UK), the power to issue such a notice may arise under sections 42(2), 59(2) or 67(2) of the Enterprise Act 2002.

<sup>21</sup> Ofcom must carry out regular reviews (at least every three years) of the operation of statutory provisions on media ownership including the public interest test for media mergers, and must send the report to the Secretary of State (s.391 Communications Act 2003). We undertook our most recent review in 2009. We made two main recommendations: to remove the rules around local radio service and multiplex ownership and national multiplex ownership; and to liberalise (rather than remove) the

- The "20/20 rule"<sup>22</sup>. This prohibits a newspaper group with more than 20% of national newspaper share from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.
- To prevent or restrict TV/radio licences being granted to particular types of person whose influence might cause concern (e.g. advertising agencies)<sup>23</sup>.
- To require Channel 3's appointed news provider not to be excluded by the above rules, and to be suitably well remunerated<sup>24</sup>.

### Broadcast standards and the role of impartiality

4.17 Broadcasters licensed by Ofcom are subject to the Ofcom Broadcasting Code (the "Code") which among other things requires both due accuracy and due impartiality of television and radio news. The BBC is subject to its own Editorial Guidelines - as Section 5 of the Code that relates to accuracy and impartiality does not apply to services funded by the licence fee. As set out in the Code:

"Due" is an important qualification to the concept of impartiality. "Impartiality" itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context... is important."

4.18 In our PIT report, we said that impartiality cannot be measured precisely and broadcasters have a degree of editorial discretion in the selection of the news agenda. There could be cases where deliberate exclusion of stories could potentially be a breach of the Broadcasting Code. However, in practice, the partial selection or omission of news stories would be a subtle one which it could be difficult, through regulation, to identify and/or prove. The rules would not necessarily prevent an individual with control of a media organisation from influencing the news agenda through the selection or omission of stories.

4.19 We recognised that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it. The regulatory framework, while relevant to the plurality of news and, hence, the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news. This was the position adopted by the Competition Commission in *Sky/ITV*.

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local cross-media ownership rules. The multiplex ownership and local cross-media ownership rules were removed and local radio service rules were modified all with effect from 15 June 2011.

<sup>22</sup> Section 350/schedule 14 of the Communications Act 2003 Part I. The restrictions apply to both licensees/newspaper owners and persons controlling licensees/newspaper owners, the participation threshold being 20%.

<sup>23</sup> Schedule 2 Broadcasting Act 1990 and Schedule 14 Part 4 Communications Act 2003.

<sup>24</sup> S. 281 and 280(3)(a) Communications Act 2003.

## Positive obligations on public service broadcasters

- 4.20 The public service broadcasting framework acts to ensure certain levels of content provision, including news, by the BBC and other public service broadcasting.
- 4.21 Ofcom regulates Channel 3, Channel 4 and Channel 5 through licence conditions intended to promote the fulfilment of the purposes of public service television. Licence commitments are currently focused on meeting public service purposes in a small number of core programming genres regarded by audiences as the most important (in particular news and current affairs).
- 4.22 In return, the licensees receive specific benefits. These include the right to appropriate prominence on Electronic Programme Guides ('EPGs') as well as access to spectrum that enables them to make their services available to 98.5% of the UK population on the digital terrestrial platform.
- 4.23 We summarise these PSB obligations in the figure below and in further detail in **Annex 3**.

**Figure 2: Summary table of PSB obligations by type and rationale**

Type of obligation	Obligation	Commercial PSBs affected	Rationale
Core genre obligations	To show an appropriate amount of national and international news (overall and in peak)	All commercial PSBs	Ensure a range of impartial news programming is available which appeals to different audiences
	To show an appropriate amount of regional news and non-news programmes (overall and in peak)	Channel 3 licensees only	Ensure plurality of news provision in Nations/English regions to reflect distinct cultural identities across the UK
	To show an appropriate amount of current affairs programmes (overall and in peak)	All commercial PSBs	Ensure a range of programmes are available providing analysis of current events and ideas
Content production and investment obligations	To show an appropriate amount of original programming (overall and in peak)	All commercial PSBs	To stabilise investment in UK creative economy and encourage production of content which reflects and strengthens our cultural identity at a UK level
	To ensure a suitable proportion & range of programmes by spend & volume are made outside the M25	All commercial PSBs	To secure investment in production businesses across the UK and encourage production of content which reflects the lives of people across the UK.
	To ensure a minimum of 25% of programming is allocated to independent productions	All commercial PSBs	To secure investment in a range of diverse UK businesses
	To draw up, revise & comply with a code for commissioning from independent producers	All commercial PSBs	To ensure that PSBs are not able to use purchasing power in a manner which will stifle innovation in the UK independent sector
Structural obligations	To ensure approved networking arrangements are in force	Channel 3 licensees only	To ensure the regional Channel 3 services are (as a whole) able to compete effectively with other UK television services
	To achieve the greatest possible level of coverage for PSB channels	All commercial PSBs	To ensure that public service channels are accessible on a near universal basis.

## Section 5

# Our advice on media plurality

## Measuring media plurality across platforms

- 5.1 The Secretary of State has asked us to set out options for measuring media plurality “across platforms”, and recommend the best approach.
- 5.2 We have interpreted “across platforms” to mean television, radio, press and online.
- 5.3 There are many measures which are relevant to quantifying a news media market's plurality. In summary, they fall into three categories:
- availability;
  - consumption; and
  - impact.
- 5.4 In the following analysis, we have assessed possible metrics against their suitability to describe the two proxies we have for a plural market – diversity of voice and concentration in consumption.

### Availability metrics

- 5.5 This category of metric captures the number of providers available at the point of consumption.
- 5.6 The existing plurality public interest consideration for media enterprises is only about “the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience”. On its face, this appears to be only about the number of persons having control, and the argument was put to the Court of Appeal in litigation following the decision in the *Sky/ITV* merger that number was all it means. However, the Court of Appeal agreed with the Competition Commission that “plurality” in this context carries an implication of range and variety as well<sup>25</sup>. We think it right for this broader idea of “plurality” to be retained in any future framework.
- 5.7 The number of providers or titles does give a sense of the ‘shelf space’ occupied by titles or news organisations. However, counting the number of providers does not measure a diversity of viewpoints or whether they are consumed. For the devolved nations and English regions, measures of availability could be more insightful; where they reveal limited choice in supply they could point to economic sustainability issues.
- 5.8 In our PIT report, we did not look simply at the number and range of media enterprises, as we said that an analysis of this type would not take account of the ability to influence opinion. At the most extreme, adopting a count of the number and range of owners of media enterprises, without taking account of their ability to

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<sup>25</sup> British Sky Broadcasting Group PLC and Virgin Media, Inc v The Competition Commission and the Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2.

influence opinion would mean that all news and current affairs providers would be included as contributing to plurality simply by being available, regardless of whether they were used by several million or very few consumers. We said we did not believe this approach to be credible.

- 5.9 We considered that in assessing plurality and sufficient plurality we should look not simply at the number and range of media enterprises, but also at their level of consumption and relative ability to influence and inform public opinion.
- 5.10 **We have therefore concluded that availability metrics are relevant in any plurality assessment, but offer limited insight and on their own are not sufficient.**

### Consumption metrics

- 5.11 Consumption measures capture the number of people using news media, and the frequency or the time they spend consuming it.
- 5.12 We have identified five categories of consumption metric that may be relevant to a plurality review:
- **Volume of consumption** - often expressed as a 'share' of total consumption – this captures the level of consumption, typically in a manner that depends on the nature of the content being consumed. For TV and radio, the primary focus is minutes of viewing or listening. For newspapers, the key volume measure is time spent reading. For online, the key measures may be page hits, or dwell time. It is not meaningful to combine volume measures for different platforms (see below) and thus generate a cross-platform picture of share, unless grounded in a common methodology and unit of consumption (as for example, the bespoke 'share of references' in Figure 1).
  - **Cross-media consumption** - which can provide a cross-platform view on the consumption of news media. For example, our bespoke cross-media 'share of references' research, described above, which was calculated by asking consumers which sources of news they use nowadays, aggregating the results and expressing the references to each provider as a share of the total responses. This produced a cross-media metric with consistent methodology and a consistent definition of news across all platforms. It was used during the proposed merger of News Corporation and Sky and published in our PIT report.
  - **Revenue** - this is a measure of consumption commonly used in economic analysis, where it is appropriate to use money as the common currency for comparing different products. Therefore, it is of some interest as an alternative cross-media measure. However, it is likely to be a less effective common currency in the context of a plurality review, since the relationship between revenue and the ability to exert influence is less direct than the relationship between revenue and economic power. Furthermore, most revenue metrics do not distinguish news and current affairs from other genres. And there is a particular challenge in using revenue metrics to measure the importance of media that are free at the point of consumption.
  - **Reach** - provides an indication of the percentage of people who are exposed to a provider or title or platform in a given period of time (for example, the number of people who have watched at least five minutes of television news on a specific channel in a given time period). Each industry measurement system has its own

specific thresholds and definitions of reach – e.g. the number of people who read a newspaper within its publication period, listened to at least five minutes of radio. In each case, the results are often expressed as a percentage of the total population, but can be expressed in thousands of people.

- **Multi-sourcing** – the average number of news media sources across TV, radio, newspapers and the internet that consumers use in a specified period of time.

5.13 We note that 'reach' and 'multi-sourcing' are related measures, though distinct. In particular:

- related to the extent that there is a positive overall correlation between the number of organisations with high reach and the mean amount of multi-sourcing; but
- distinct in the sense that the first provides a sense of the exposure consumers have to a single provider or title in a given time period (e.g. BBC One has an 65.1% 3+ minutes weekly reach for its news content); the second provides an indication of the average number of providers/titles a consumer is drawing on in a specified period (e.g. two news titles per week).

5.14 Reach and multi-sourcing offer insights into the degree to which there is potential diversity of viewpoints consumed by the population. For example, if a wide range of providers are consumed by a large proportion of the population, it is likely that people are typically consuming more than one perspective on the news. This assumes that providers are offering a range of different viewpoints.

5.15 Volume of consumption, and metrics based on claimed consumption, are likely to be the most effective means of measuring share, which in turn provides an indication of the level of influence associated with any one provider.

5.16 In sectors where one is looking at a single large media player, then a simple share metric is most revealing - it indicates its market position. However, where the market is more fragmented with a number of players, a measure of market concentration is perhaps more useful. For example, the Herfindahl-Hirschman index (HHI) is an economic concept, which indicates market concentration<sup>26</sup>. However, we note that such a measure tends to work best in well-defined markets with clear boundaries and a consistent set of products. For this reason, HHI could work within a sector but would be challenging to apply in a cross-media assessment.

5.17 In TV, newspapers and radio there are well-established measurement systems - BARB, NRS and RAJAR. These are based on methodologies that are credible, produced independently on a timely basis and already form the basis of many business and commercial decisions.

- BARB measures television viewing patterns, which can be broken down by a number of variables including genre, time of day and demographic profile of the viewer.
- The NRS measures newspaper readership – i.e. have respondents read the newspaper. Although not all of a paper is news content, news is likely to be the

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<sup>26</sup> It is defined as the sum of the squares of the market shares of the 50 largest companies in a market. The index is expressed in a range from 0 to 10,000. The lower the index, the more competitive the market is.

primary motivation behind any purchase/consumption, and news content is given the most prominence.

- RAJAR measures radio listening overall but not the programmes listened to. Therefore, it does not provide an estimate of listening to news content.
- 5.18 The measurement of online consumption is, by comparison, relatively new and offers a mix of established and still-developing measures. UKOM is currently the industry-standard. Alongside sector-specific measures, bespoke quantitative research can also play a role in a plurality assessment – as it did in our PIT report. This is how we obtained our 'share of references' analysis.
- 5.19 While not perfect, these consumption measures provide a reasonable proxy for the different elements of plurality, and are practical to measure.
- 5.20 **We therefore recommend that consumption metrics (in particular share, reach and multi-sourcing) form the foundation of a plurality assessment:**
- **Share of consumption (using single-sector measurement systems, where this is possible, and bespoke cross-media 'share of references') is a good proxy for measuring influence in the news media market.**
  - **Reach (particularly cross-media, using bespoke quantitative research) and multi-sourcing (using the same) are good proxies for diversity of viewpoints consumed.**
- 5.21 Given the dynamic nature of the market, we recommend that metrics themselves are reviewed as part of each plurality review to take account of other consumption metrics as they become relevant and available.

### Impact metrics

- 5.22 Impact metrics need to capture the influence of news content consumption on how people's opinions are formed.
- 5.23 However, our attempts to measure impact through quantitative research have revealed complexity in how people's opinions are formed:
- Impact can occur in a subtle and indirect fashion and it is unlikely that people are fully aware of its effects.
  - This means that any attempt to measure impact using direct techniques, such as asking people to state if they have been influenced, are likely to be blunt and limited tools.
  - Our qualitative research commissioned for this report confirmed that while participants could talk about the different sources that may inform their opinions on news and current affairs, there was no easy way to capture opinion-forming directly.
- 5.24 By way of example, some of the possible (albeit imperfect) proxies for measuring impact include:



- **Importance of news sources** – as measured by people's perceptions of the sources and platforms that matter most – both from a personal and societal perspective.
  - **Impartiality** – as measured by the degree of regulation applied to each platform and consumer perceptions of how different sources and platforms deliver against this.
  - **Reliability and quality** – as indicated by the levels of expenditure on news content and journalism, and consumer perceptions of how different sources and platforms rate.
- 5.25 We note that there is no single proxy that fully constitutes impact. Therefore, we believe that one needs to assess a range of sources in the round and apply a degree of judgement.
- 5.26 **We recommend that proxies of impact (and particularly perceived 'importance') should play a part of a broader assessment of plurality, noting that they are imperfect because one can only measure people's conscious articulation and not actual effects.**

#### The role of contextual factors

- 5.27 We have highlighted the importance to a plurality review of availability, consumption and impact measures (single-sector and cross-platform). But the measures alone are insufficient to paint a full picture of plurality.
- 5.28 Non-quantitative factors will also play an important role in drawing firm conclusions because even within one platform, the operating environment can vary between organisations. Examples include:
- Regulation and oversight, some based on statutory obligations. For example, Ofcom's Broadcasting Code or the BBC's own editorial or regulatory processes and compliance.
  - The potential power or editorial control exercised by owners/proprietors within commercial organisations.
  - Governance models (such as Trusts, publically limited companies with shareholders, private companies, statutory corporations).
  - Internal plurality – including the range of internal voices.
- 5.29 For example, we note that some media organisations encourage a culture of internal plurality while others do not. In the PIT report, we said that in light of the importance attached by Parliament to media plurality in informing opinion and setting the agenda, we did not consider we could rely solely on internal plurality to ensure sufficient plurality in the provision of news and current affairs.
- 5.30 From a regulatory perspective, broadcasters are subject to impartiality requirements while newspapers and websites are not. As we set out in paragraph 4.17, Ofcom's Broadcasting Code requires that "news in whatever form, must be reported with due accuracy and presented with due impartiality". The requirement for "due impartiality" is not absolute and broadcasters have a degree of editorial discretion in the selection of the news agenda. In the PIT report, we recognised that the impartiality rules may

contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it.

## Summary

**5.31 In bringing this all together, we recommend that a plurality assessment must make use of a basket of measures – of which consumption metrics are the most useful – together with consideration of a range of contextual factors. This is summarised below in Figure 3.**

5.32 In addition, these metrics should have the flexibility to be analysed:

- at a retail or wholesale level<sup>27</sup>; and
- by demographic or location (e.g. by age, by nation).

**Figure 3: Recommended measurement framework**

Category	Metrics	Description	What it indicates
Availability	Number of providers		An indication of the potential for diversity of viewpoints.
Consumption	Reach	By platform – TV, Radio, Newspapers, Internet By provider within platform	An indication of the diversity of viewpoints disseminated.
		Cross platform	As above. Potentially useful in assessing a cross media merger. It establishes the capability for each provider to reach the population regardless of platform.
	Share of consumption	Within platform – TV, Radio, Newspapers, Internet By provider within platform HHI within platform	An indication of the potential concentration in patterns of consumption.
		Cross platform – TV, Radio, Newspapers, Internet Cross platform by provider HHI cross platform	As above. Note: this can be in the form of Ofcom's bespoke share of consumption that captures the reach and frequency of consumption; or in the form of average minutes consumed on each platform derived from industry measurement systems.
		Multi-sourcing	By platform and cross platform
Impact	Personal importance	By platform By provider	Provides one proxy for measuring the potential to influence opinion.
Contextual factors	A range to be considered dependent on the situation	Examples include Internal plurality Internal governance processes Editorial policy Impartiality requirements Market trends and future market developments	

**5.33 We recommend that the metrics framework itself should be assessed during each main plurality review. This will ensure that it continues to capture what we cannot predict or measure today.**

<sup>27</sup> At the retail level each individual title, or brand, through which the news is delivered to the consumer would be assessed. At the wholesale level, the output would be counted to the third party supplier of the news. For example, BBC One, BBC Two, Sky News, Channel 4 and Five are classified as retail news providers, but at the wholesale level this would be considered to be BBC, Sky and ITN as ITN provides news for Channel 4 and Five.

## Online and the measurement framework

### Definition of online news providers

- 5.34 We have been asked whether a framework for measuring plurality should include websites.
- 5.35 We have interpreted this question broadly to include internet usage regardless of device (PC, tablet, mobile), incorporating both websites and applications.
- 5.36 Online news provision today consists of a number of different types of service, for example:
- **Websites provided by existing news providers, as an extension of their existing services, some free and others behind pay-walls** – for example, the BBC, Sky, The Times and MailOnline.
  - **Stand-alone news sites operated by new providers of news** – including websites and blogs – for example, the Huffington Post.
  - **Aggregators of online news** – including Google News and Twitter.
  - **New forms of retailer, including app stores and social networks** – news organisations agree to financial and technical conditions in return for access to consumers. These include Apple and Facebook.
  - **Search engines** such as Google, taking consumers directly to a range of different news sources based on their search results.
- 5.37 We note that the distinctions between these categories are blurred and that some organisations fulfil more than one function. For example, Google operates as an aggregator and as a search engine.

### Inclusion in a measurement framework

- 5.38 Any measurement framework for plurality must be flexible enough to accommodate the evolving nature of the news media market – in particular the rise and rapid evolution of online news in a wide range of forms. The value chain for news media is becoming more complex and new online players blur the lines of who controls and shapes information reaching consumers.
- 5.39 The move to online distribution has created a rich diversity of online news supply:
- **Different online formats allow a range of consumption patterns.** Online news combines a range of formats (text, graphics, images, audio and video), enabling various combinations of immediacy and depth.
  - **Low barriers to entry** have facilitated a growing diversity of viewpoints.
  - **Online news and social media enable high levels of participation including unmediated comments.** This is a positive development in engaging citizens in the news agenda and contributing to the debates and issues of the day.

- **Rapid innovation in online distribution and devices.** Smartphones and tablets support a growing range of applications providing increasingly ubiquitous access to news.
  - **New online navigation tools such as search and recommendation -** empowering citizens to browse and consume the content most relevant to them.
- 5.40 Online services are currently used for news by a significant but smaller proportion of the population than television, newspapers or radio. 41% of UK adults currently use the internet for news, compared to 85% who use TV news, and 53% for radio and newspapers alike.
- 5.41 However, online news use is steadily growing. In 2002, only 15% of the population had ever used online news, growing to 27% in 2007<sup>28</sup>. The current figure of 41% represents a significant further increase.
- 5.42 Within online, new players have risen to prominence. Our consumer research has found that Facebook and Google News are used by around one in five (19%) of people who use the internet as a source of news, making them the equal second most important sources of online news<sup>29</sup>. However, the BBC website has a significant lead over all online sources, with 57% of online news users claiming to use it.
- 5.43 Overall, online has the potential to make a strong positive contribution to plurality, increasing the diversity of views available to, and consumed by, citizens, and reducing the ability of any one voice to dominate. This must be an important factor in any review of plurality.
- 5.44 At the same time, online does create some new potential risks, which might also need to be considered as part of any plurality review:
- **Disruption to traditional news markets,** caused by the structural shift of consumption and advertising revenue online, as new technologies and distribution forms come to replace the old. While there is a degree of inevitability surrounding these developments, there is a need to maintain a watching brief to understand them and their potential implications.
  - **The potential of navigation tools to reduce plurality of consumption.** There is a risk that recommendations are used in a manner that narrows citizens' exposure to different points of view, by reinforcing their past habits or those of their friends.
  - **The potential for new gatekeepers to emerge.** Some new online players (social networks, app stores, search providers) may be able to exercise a significant degree of control over the content that is made available to consumers. This is likely to be seen primarily as a competition issue, but it could also have implications for plurality.

<sup>28</sup> (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/newnewsannexes.pdf>).

<sup>29</sup> Note however that comparisons with other online research sources (such as Nielsen) may be limited. For example, in our own survey Google News may have been overstated if respondents were thinking more broadly about Google rather than Google News per se. Additionally, the population sample for our sample is those that use the internet for news, whereas other surveys use online users more broadly.

- **Editorial influence by gatekeepers.** At present, players who might have gateway power do not have their own newsgathering operations, nor is their evidence of significant discrimination between news providers using editorial criteria. If however they were to start exercising a greater degree of editorial control in the future, then this could raise significant plurality concerns.

5.45 Our conclusions are that:

- online will continue to bring significant change to traditional news media markets;
- it is hard to predict the future nature of these changes – so an assessment framework must be flexible; and
- the progressive migration of news media into digital markets emphasises the need for cross-platform measures.

5.46 Responses to our Invitation to Comment also indicated very high levels of support for websites to be included in the measurement framework in some capacity.

5.47 **Therefore, we recommend that online be included in any market assessment.**

5.48 We note however, that such a move could generate potential jurisdictional challenges given the global nature of many online players. Further consideration is needed as to how a UK policy could work alongside other regulatory frameworks, notably in the US and EU.

5.49 We also note that if online were to be included as part of the current public interest considerations in merger control, this would require a change to the current definition of “media enterprises”. Under current legislation, media enterprises are television, radio and (for cross-media mergers) newspaper providers. To include online-only news providers, content aggregators, search engines, social media and other players either a broader definition of “media enterprise” or a new public interest consideration would be needed<sup>30</sup>.

5.50 **We recommend that the Government and Parliament give consideration to a redefinition of media enterprises or to a new public interest consideration that would include relevant online organisations.**

### Practicality and scope of measurement

5.51 In our PIT report, we focussed on the top 50 news sites by share of page views and minutes<sup>31</sup>, using UKOM<sup>32</sup>/Nielsen data to give the current position of different online news providers. We have updated this analysis as part of this report.

5.52 There are other online measurement systems available such as Hitwise and comScore, and many research companies also offer bespoke online measurement and monitoring services, but we believe the industry measurement system UKOM has the widest support today given its backing from a range of industry bodies. **We recommend that share (and potentially reach) of the top news websites is**

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<sup>30</sup> This may be achieved either by primary legislation or by order under s.58(3) Enterprise Act 2002.

<sup>31</sup> See PIT, Figure 11: Share of page views and minutes for top 50 news sites by wholesale news provider in October 2011.

<sup>32</sup> UK Online Measurement (UKOM) is the UK's industry-recognised online media measurement for advertisers.

**currently the appropriate measure, and UKOM should be the source in the immediate future to measure online consumption<sup>33</sup>.**

- 5.53 This sector is innovating rapidly. Emerging online measurement tools can capture observed behaviour, rather than relying on sample-based proxies, and so benefit from large volumes of real time consumer data. However, they are currently focussed on meeting the needs of advertisers and are not commonly understood by those outside the industry nor readily transparent. They have the potential to play an important role in a future plurality assessment, though it may be a while before they can be used to relate online news consumption to impact and opinion forming.
- 5.54 More fundamentally, the precise nature of future plurality concerns in the online news market are difficult to forecast. For example, if companies offering search and aggregation services start to discriminate editorially between alternative sources of news, then these companies may become more significant from a media plurality perspective. It would be important that this means of exercising influence was captured by the measurement framework, and this may require the adoption of different measures.
- 5.55 **The suitability of online measures - in the broadest sense - should be assessed during any full plurality review, and if necessary, the measurement framework should be revised to ensure that it remains effective.**

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<sup>33</sup> We note that from 2013, UKOM will partner with comScore rather than Nielsen.

## Triggers for a plurality review

- 5.56 As part of our advice to the Secretary of State contained within the PIT, we suggested that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. This was because it does not address certain types of market developments, such as the risk of market exit by news providers, or organic growth in audience share and the associated ability to exercise influence.
- 5.57 We have now been asked "What could trigger a review of plurality in the absence of a merger? How might this be monitored and by whom?" We were specifically asked to consider how the current media plurality public interest test could be extended to address organic growth or market exit.
- 5.58 With this as context, there are broadly four questions that need to be addressed in relation to triggers:
- What is the most effective means of triggering a plurality review in the absence of any specific event, in order to consider the effects of organic growth?
  - What types of event should trigger a plurality review, over and above the existing merger-based trigger?
  - What is the scope of the existing media merger trigger and should it be broadened to include online and wholesale news providers?
  - What role if any, should discretion play, either as part of the above, or additionally?

### Triggers for considering the effects of organic change

- 5.59 We have identified two different approaches to triggering a plurality review to consider the effects of organic change:
- **A metric-based trigger**, which would require a plurality review to be carried out if organic growth resulted in a specific metric being breached.
  - **A time-based trigger**, which would require a plurality review to be carried out automatically on a periodic basis.
- 5.60 Both of these approaches are objective, and would form an apolitical and independent basis on which to trigger a plurality review.
- 5.61 A metric-based trigger received support from several stakeholders. Such an approach would allow a review to be triggered automatically if organic growth in market share (or another metric) exceeded a defined threshold. This has the benefit, at least in principle, that a review would be carried out at the point in time when there was a potential concern, and not otherwise. This is therefore potentially a more targeted approach than would be achieved using a time-based trigger.
- 5.62 There are however disadvantages to a metric-based trigger. A key concern is the lack of certainty to market players created by such an approach, since at any point in time it is possible that a change in market share by one player will trigger a review of the entire market, in a manner that may not be particularly transparent to the market as a whole.

- 5.63 Metric-based triggers also suffer from two important practical limitations:
- i) **Agreeing a simple set of metrics.** Starting from the principles (see para 2.11, the trigger must be simple and transparent. There are many ways to measure plurality, and there is no standardised cross-media measure that could act as a *single* trigger metric. Instead, the trigger would need to be based on several single sector metrics, not all of which adequately capture news media consumption. TV and newspapers are generally perceived to be the media which have most impact and influence (see para 4.6), so a metrics trigger could limit itself to a threshold for each.
  - ii) **Setting the level.** Platform thresholds, by their nature, would need to reflect the particular characteristics and market structures of each platform. This would reduce the simplicity of the trigger process and create much debate as to how and where to set the levels.
- 5.64 We therefore favour a time-based trigger. This provides a high degree of certainty, simplicity and transparency to the market.
- 5.65 The key question for a time-based trigger is the length of time between periodic reviews. Setting it too frequently - to three years or less – would create a cycle of near-perpetual review, which would be potentially wasteful and a disproportionate burden on industry. Setting it too infrequently – greater than five years – would risk the trigger not being effective, due to the pace of change in the market. Neither scenario looks sensible; we recommend that the timetable for a periodic review be every four or five years, with the frequency set by Parliament.

#### Event-based triggers for considering market exit

- 5.66 As noted above, the current statutory framework allows plurality to be assessed in the event of certain media mergers. The question we have been asked implies that this will continue to be the case, which is a position we support.
- 5.67 One of the key risks we identified in our PIT report, which is not captured by the current framework, is market exit by current news providers. Exit from the news media market may matter because it can lead to concentration in patterns of news consumption, contrary to one of the objectives of plurality. We have been asked to consider how the current media plurality public interest test could be extended to address such market exit.
- 5.68 The policy aim would be to trigger a review where there was a risk that the exit had caused a reduction in plurality which was both significant and permanent. More specifically, the intention would be that:
- The permanent closure of a major news provider, such as ITN or Sky News, should trigger a review.
  - A more transitory change, such as the closure of the News of the World and its replacement by the Sun on Sunday, whose final effect is unclear at the point of market exit, should not trigger a review.
- 5.69 We note that while in principle there is an attraction to such an exit trigger, there are some practical difficulties.



- There are significant challenges in developing a workable definition of exit which clearly distinguishes the different cases set out above.
  - Of particular concern is the need to avoid triggering repeated reviews because the definition of exit is too broad, or the threshold for materiality and permanence is too low. Such a process would be potentially wasteful and place a disproportionate burden on industry – both in terms of cost and uncertainty.
  - One means of avoiding repeated reviews is to provide a reviewing body with a reasonable degree of discretion as to whether a review should be carried out. We discuss the potential role of discretion in more detail below, and conclude that there are circumstances where it is of value. However, too heavy a reliance on discretion is clearly undesirable, due to the uncertainty it creates.
- 5.70 Overall, we conclude that there are some benefits from an exit trigger, in that it allows for a review of plurality to take place in response to particular events (i.e. market exits) that are not captured by the existing merger regime, or by the introduction of a new time-based trigger.
- 5.71 However, the benefits to reviewing the market in response to an exit are more limited than the benefits associated with reviewing a merger. The reviewing body cannot prevent a market exit from happening. Moreover, the ultimate effects of the exit may not be clear for some time and are likely to be more dispersed than in the case of a merger, making a judgement on materiality and permanence hard at the time of exit.
- 5.72 Therefore, there are trade-offs between exit and time-based triggers. Without an exit trigger there is a risk is that some events occur in the time between periodic reviews that do not come under scrutiny. One mitigation would be to ensure that the time between periodic reviews was not too long - so the impact of exit would be unlikely to be significant during the period leading up to the next review.
- 5.73 **There may be merit in introducing an exit trigger, if a mechanism can be designed that avoids subjecting the market to continuous review, and avoids too heavy a reliance on discretion. The need for such a trigger will also depend on the frequency of any periodic reviews.**

#### Existing media mergers and the potential inclusion of online and wholesale news providers

- 5.74 Under the current statutory framework, plurality can be assessed in the event of a merger involving media enterprises or newspapers. This is currently limited to consolidation among organisations in the newspaper and licensed broadcasting markets.
- 5.75 To trigger a review of plurality, a transaction must involve two enterprises<sup>34</sup> “ceasing to be distinct”<sup>35</sup>; and meet a jurisdictional threshold – either turnover based (£70 million) or based on share of supply/demand (25%).
- 5.76 Intervention in a merger is at the discretion of the Secretary of State. He needs reasonable grounds to suspect that the merger meets jurisdictional thresholds and he must believe that the public interest ground he specifies may be “relevant” to the

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<sup>34</sup> An “enterprise” is the activities, or part of the activities, of a business.

<sup>35</sup> There is, however, provision to capture both gradual and partial changes of control, including control by means other than acquisition of shares, (e.g. contract).

merger. There is no requirement that turnover be generated from the “public interest” activity; nor that the supply of goods or services which triggers jurisdiction be the supply of goods or services which raises the public interest concern. Unless the Secretary of State amended the existing list of public interest considerations, for him to intervene in a merger on plurality grounds, the merger must involve at least one “media enterprise” or newspaper.

5.77 The question we have been asked by the Secretary of State implies that this framework will continue to operate, which is a position we support. We note that a review of plurality relating to a relevant media merger is currently at the discretion of the Secretary of State, and we invite Parliament to consider this role of political discretion in the broader context of the trigger tests we have recommend below.

5.78 There are also some practical questions as to the scope of the current framework.

- **Online:** As set out above in our response relating to websites (see paragraph 5.38 onwards), the online environment is growing in importance for news media organisations and is playing an increasingly central role in how consumers interact with news. We have therefore recommended that the regime should be extended to include online organisations within the definition of media enterprises or public interest considerations. This would ensure that in future a plurality review could be triggered by consolidation in and among newspaper groups, licensed broadcasters and online news media providers. We note that there may be definitional challenges in limiting such an extension to online aggregators rather than newsagents and other distributors in the physical world.
- **Wholesalers:** As we set out in paragraph 3.18 onwards, the news value chain is becoming more complex. In this context, there is a general principle that consideration beyond licensed broadcasters is now needed to capture media providers up-stream and their potential exercise of significant editorial control over content and consumers. We recommend that the definition of media enterprises or public interest considerations include wholesalers of news content – such as ITN, which is a key player in the supply chain for television news, yet is not the broadcast licensee so its merger with another person or organisation does not currently trigger any existing media public interest consideration.

5.79 We note that further consideration is required to determine whether this existing merger process sits within a new plurality regime or continue in parallel to it. Either scenario may be desirable, but in any case, the regulatory framework needs to be consistent and avoid a double jeopardy outcome such that more than one plurality review is triggered by the same cause.

### The role of discretion and of complaints

5.80 Discretion plays two potentially important roles in relation to triggers:

- It enables a review to be carried out in circumstances which were not originally anticipated, and were not captured by the trigger mechanism.
- It enables a full review not to be carried out in circumstances where application of the trigger mechanism to a market event results in a potential concern being identified, but where an initial analysis suggests that this is unlikely to be material.

5.81 Discretion comes in two forms – from Government and politicians, or from the reviewing (or another regulatory) body.

- Discretion has the advantage of introducing flexibility and the potential to target a review in response to a particular concern.
- However, such discretion has the potential to be subjective, lead to excessive lobbying, and create market uncertainty. Political discretion can bring perceived politicisation of the process, while regulatory discretion can risk confirmation bias.

5.82 In a market driven by rapid change in technologies and consumption, it is possible that a review may be required that would not be triggered by a defined event, and that could not wait until the next periodic review. While the normal expectation is that organic change is slow, this is not always the case. For example, if consumption of news were to switch rapidly from newspapers to tablets, this could have a significant effect on plurality, over a short timescale, and without being caught by the event-based triggers discussed above.

5.83 The options available to address this type of concern are:

- To reduce the time period between periodic reviews. This would reduce the impact of organic growth between reviews – but expose the market to more frequent review, at an increased burden to industry and cost of regulation.
- To broaden the definition of event to include technology and consumer changes. These events by their very nature are unpredictable and hard to define. If such an approach was deemed desirable, it would be challenging to set out in legislation.
- To introduce some form of discretionary review. The flexibility to act in response to unforeseen events is appealing. Yet at the same time, there is the risk that too much discretion would create market uncertainty and impair incentives to invest and innovate.

5.84 On balance, our preference is to ensure that the time period between periodic reviews is short enough to capture likely levels of organic change, for example four or five years. **As long as that is the case, we do not recommend discretion as a means of triggering a review between periodic reviews.**

5.85 One particular form of discretion is the ability to carry out a review in response to complaints. Under such a model, a complaint could be from individuals, organisations, or consumer groups, to the body responsible for a review. This trigger would allow individuals and organisations to engage actively in the process of assessing how plural news markets are. It could also encourage whistleblowers to come forward with new evidence. However, it could create perverse incentives among well-funded or organised campaigners to 'flood' the process, making it a costly process to implement and run. **We do not recommend complaints as a trigger mechanism at this stage.**

5.86 As noted above, discretion may play an important role in deciding not to carry out a full plurality review in response to a market event. This is the case for the existing merger regime, where the Secretary of State has discretion as to whether or not to trigger a public interest test on plurality grounds, even where the thresholds for a merger review are met.

5.87 We acknowledge that this type of discretion creates a variety of risks, including a reduction in transparency and certainty, and a risk of decisions being politicised. **We do however think it is important that there is some mechanism for deciding at**

**an early stage what types of market events are likely not to be material, and therefore do not justify a full review.** This is likely to require a degree of discretion, either political or for the reviewing body. The only possible alternative is some form of 'fast track' review, which would allow a rapid assessment of any potential concerns, but while we believe there is merit in such an approach, it is still likely to involve the decision maker exercising a degree of discretion in deciding whether or not to carry out a full review.

## Limits or prohibitions on news market share

5.88 We have been asked “Is it practical or advisable to set absolute limits on news market share?” This speaks to the second of the objectives of media plurality (as set out in para 3.8), which is to prevent any one media owner having too much influence.

5.89 We answer this question in three parts:

- **Is it practical or advisable to set absolute limits (in effect, a cap) on news market share?** These would apply regardless of whether a review of plurality was triggered by a merger, time or events as we have recommended above.
- **What does a good plural outcome look like (the question of sufficiency)?** When the reviewing body is assessing how plural a market is, having a sense of sufficiency, or what “good” looks like, would help to inform its review.
- **How do we balance absolute limits or prohibitions with issues of economic sustainability?** A news media organisation may be commercially viable only if it is able to command a high market share.

### Absolute limits or prohibitions

5.90 An absolute limit can take two forms – prohibited transactions or prohibited market share, a breach of the latter would lead to automatic remedies such as divestment.

5.91 Absolute limits are in principle simple, binary rules. They create ‘bright white lines’ that leave no room for market uncertainty and minimise the opportunities for regulatory gaming. There was some support for such a framework amongst those who responded to our Invitation to Comment.

5.92 The certainty provided by absolute limits could be particularly attractive, given the degree of judgement which is likely to be necessary in any assessment of plurality. We note in this context that consideration of plurality contrasts with rules and guidance in a competition assessment, where it is easier to test empirically whether companies have market power.

5.93 However, setting absolute limits leaves no room for flexibility. This creates a risk that it is not possible to address issues of commercial sustainability and innovation in an appropriate manner, and this could be a particular concern in markets that are dynamic and unpredictable. Therefore, while we acknowledge the clarity with which absolute limits bound what is acceptable, our view is that such an interventionist approach should only be applied in a targeted manner, to those issues of greatest concern.

5.94 It is important to emphasise that a lack of absolute limits does not mean that there might not be a significant concern regarding the level of plurality. It simply means that such a concern is best addressed via a full and thorough review of plurality, taking all relevant factors into account, rather than by introducing blanket prohibitions. There is an analogy here with competition analysis, where a high market share is an indication of market power, but where a number of other factors are also taken into consideration.

5.95 One respondent to our Invitation to Comment, Enders Analysis, proposed revenues as a suitable metric for an absolute limit. It suggested that any company controlling more than 15% of the media sector by revenue would be required to reduce in size. It

argued that this would streamline the regulatory process and “*be the simplest, cheapest, clearest, least intrusive and most easily communicable way of maintaining plurality*”<sup>36</sup>.

5.96 We do not recommend this approach to setting absolute limits. It would be an effective means of limiting the economic strength of any one company, and doing so on a cross-media basis, which is what was intended by the proposal. However, it does not target the issues of diversity or influence with any precision, and so is likely to be disproportionate as a means of ensuring media plurality. Moreover, as previously noted, there are practical challenges associated with defining what revenues would be relevant for such a test.

5.97 Instead, we first consider the case for setting targeted platform-specific limits, based on established measurement systems. We then consider the case for cross-media ownership rules, with particular reference to the existing 20/20 rule.

#### **i) Platform-specific limits**

5.98 Limits on ownership could be set at the level of individual platforms. Such limits would be appropriate in circumstances where Parliament wished to set clear and unambiguous limits on the share of any platform held by any one entity.

5.99 However, as noted above, absolute limits are also inherently inflexible. This could be a particular concern given the dynamic nature of the market.

5.100 The obvious candidates for such limits are:

- **Newspapers:** If Parliament wished to limit the amount of influence that could be exercised by any one newspaper proprietor, then one means of doing so would be to set an absolute limit on market share, probably measured in terms of national circulation (ABC). We note, however, that the newspaper market is in decline and it may be that limitations on a declining market run counter to the need for newspaper groups to build market share in order to survive.
- **TV:** If Parliament wished to limit the amount of influence that could be exercised by any one broadcaster, it could set an absolute limit on market share, probably measured in terms of viewing. However, given that the main broadcaster this is likely to affect, the BBC, is already under public ownership, and given that all TV news is already regulated for impartiality, further rules in this area may have limited impact and be difficult to define.

5.101 It is important to note that if any absolute prohibitions are established, they should be capable of being modified or lifted subsequently, in the light of market developments, and without the need for primary legislation. This is particularly important in the case of any newspaper-specific restrictions, given the structural challenges likely to be faced by print media.

5.102 **On balance, we do not believe that platform-specific limits are likely to be advisable at this point in time. Instead, in the interests of flexibility, plurality concerns brought about by high market share should be addressed through a plurality review.**

<sup>36</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/916359/responses/individuals-responses.pdf>

5.103 **We recommend that if any platform-specific limits were to be set they should be reviewed as part of any periodic plurality review, and that there should be an appropriate mechanism to act on any resulting recommendations.**

ii) **Cross-media ownership rules**

5.104 The only cross-media limit on ownership is the "20/20 rule". This prohibits a newspaper group with more than 20% of national newspaper share from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%<sup>37</sup>. The rule was created to prevent individuals from accumulating too great a share of the national media voice.

5.105 In 2002, the Government chose to retain the rule, explaining that:

*"joint ownership of a substantial share of the national newspaper market and a substantial part of Channel 3, the only commercial public service broadcaster that currently has universal access to a mass audience, would represent an unacceptable concentration of influence in the current circumstances."*<sup>38</sup>

5.106 When Ofcom last reviewed the media ownership rules, in 2009, it also concluded that the case for removing it was not made as there had been insufficient change in the market since Parliament first introduced it. We said that:

*"while there has been a decline in newspaper readership, it remains a significant media. We do not think that the evidence shows a significant enough change in consumer behaviour to mean that newspapers and ITV1 no longer have the scope to have a significant influence in national news. Therefore we don't think it is appropriate to remove the rules."*<sup>39</sup>

5.107 Since the Ofcom review, the market context has evolved:

- the progressive convergence of platforms calls for policy that takes a cross-media platform-neutral approach; and
- online continues to increase in importance compared to traditional platforms.

5.108 Given these market developments, our view is that there may come a time in the foreseeable future when it may be appropriate to consider other, more flexible and forward-looking, means to achieve the policy aim set out in paragraph 5.104.

5.109 First, the existing merger control regime (which we are proposing remain in some form) provides an opportunity to review thoroughly any proposed acquisition of a Channel 3 licensee by a large newspaper group. The last time this regime was tested was in 2006-2009 when BSkyB acquired a 17.9% share in ITV Plc:

- It was this merger regime, not the 20/20 rule, which required BSkyB to divest most of its holding.

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<sup>37</sup> Section 350/schedule 14 of the Communications Act 2003 Part I. The restrictions apply to both licensees/newspaper owners and persons controlling licensees/newspaper owners, the participation threshold being 20%.

<sup>38</sup> See para 9.4.3. <http://www.archive2.official-documents.co.uk/document/cm55/5508-iii/550810.html>

<sup>39</sup> See para 6.27.

<http://stakeholders.ofcom.org.uk/binaries/consultations/morr/summary/morrcondoc.pdf>

- This divestment was required on competition, not plurality, grounds.
- The investigation and various appeals took more than three years to work through.
- The 20/20 rule did place a clear constraint on the size of the holding that BSKyB was able to take in ITV Plc.

5.110 Second, we are proposing a periodic plurality review, which will provide an opportunity, absent of any merger, to consider how any cross-platform concentrations in news media ownership might (if at all) be dealt with.

5.111 The case for retaining or removing the 20/20 rule in the context of a new proposed plurality regime (including the existing merger framework) needs to balance the benefits of clarity and certainty on the one hand versus flexibility on the other.

- If Parliament takes the view that there are no circumstances under which a major newspaper group should be able to acquire more than a 20% stake in a Channel 3 licensee, then it should retain the 20/20 rule, given that it would not be able to rely on the merger control regime to achieve this.
- If, however, Parliament is more neutral on preventing particular transactions and would instead be happy to rely on the plurality review process to trigger and consider issues as they arise, then it may be time to consider removing the rule.

5.112 **The question of whether the 20/20 rule should be removed is for Parliament to decide.**

### Sufficiency

5.113 The existing public interest considerations for merger control are based on the concept of “sufficiency” of plurality, yet what constitutes a sufficiently plural environment is left to the decision-making body’s discretion. Ultimately, to date, there has been no determination of what is “sufficient”.

5.114 In our PIT report, we said what was required was “a qualitative assessment of the position resulting, or likely to result”, from the proposed acquisition<sup>40</sup>. We said this was “inevitably a matter of judgment, which we exercise with regard to the considerable importance Parliament has attached to the preservation of plurality of controllers of media enterprises<sup>41</sup>”.

5.115 We adopted the same approach taken by the CC in the Sky/ITV case:

*“Whilst recognising that it would not be sufficient for plurality purposes to rely on a single provider (for example, the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a ‘sufficient’ level of plurality of persons. Rather, we have looked qualitatively at sufficiency. We have considered sufficiency by reference to the current levels of plurality,*

<sup>40</sup> Court of Appeal *British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2 (“*Court of Appeal*”), at paragraph 87.

<sup>41</sup> *Ibid* at paragraph 104.



*having regard to any change in plurality that arises as a result of the acquisition.*<sup>42</sup>

5.116 In the context of the current debate, stakeholders have also raised this issue. For example, when James Murdoch (deputy chief operating officer of News Corp<sup>43</sup>) gave evidence at the Leveson Inquiry, he said:

*“the first part of protecting plurality or supporting plurality is being crisp around what plurality might be sufficient”<sup>44</sup>.*

5.117 An assessment of sufficiency at *any point in time* is challenging as it requires a subjective judgement. Further:

- **There is neither UK case law nor international precedent:** UK case law does not relate to non-merger situations. Most countries that regulate plurality use mergers as a trigger for regulatory action.
- **There is no analytic test analogous to the economic criteria used to assess market power:** Whereas market power can be assessed by reference to the ability to price independently of competition (the SSNIP test<sup>45</sup>), there is no comparable analytic test for levels of influence .
- **There is no single, accepted measure for plurality nor consensus as to where the level should be set.** There are challenges in setting metric thresholds to quantify sufficiency (akin to our discussion of metrics-based triggers). Given the importance of contextual factors, and the associated exercise of judgement, there is unlikely ever to be a crisp and unambiguous definition of sufficiency.

5.118 Looking ahead, it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and unpredictable. What is considered sufficient or not will vary with time and needs to be considered in reference to the broad market and political context of the times. Notions of sufficiency today are likely to be somewhat different from those of ten years ago, or ten years hence. As testimony to the pace of change, in 2002 Google News and Facebook had yet to launch, and now they are two of the three most-used online sources for news.

5.119 In developing a framework that helps to test whether a market is sufficiently plural, the first step could be to describe it in qualitative terms, as set out in paragraph 3.22:

- There is **a diverse range of independent news media voices** across all platforms.
- Overall **reach and consumption is relatively high** among all consumer demographics and across all of the UK's nations and English regions.

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<sup>42</sup> Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007, (“Competition Commission”), paragraph 5.15.

<sup>43</sup> Former executive chairman of News International and chairman of BSkyB.

<sup>44</sup> Tuesday, 24 April 2012. Transcript available at <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-24-April-2012.txt>

<sup>45</sup> A SSNIP test refers to a “small, but significant, non-transitory increase in price” used in some competition investigations.

- **Consumers actively multisource** - such that the large majority of individuals consume a range of different news sources.
  - Sufficiently **low barriers to entry** and competition between providers spurs quality and innovation in the gathering and dissemination of news.
  - Overall **investment and commercial returns** are sufficiently high to ensure sustainability, and guarantee high quality coverage, extensive newsgathering and investigative journalism.
  - **No organisation or news source has a share of consumption** that is so high as to create a risk that consumers are exposed to a narrow set of viewpoints.
- 5.120 It may also be possible to develop a view as to what levels of the key consumption metrics (share, reach, multi-sourcing) provide an indication of a potential plurality concern, so that these levels are taken into consideration as part of a plurality review, without being regarded as absolute limits. As noted above, this approach is broadly analogous to the approach taken in competition analysis.
- 5.121 **It will be for Parliament to consider whether it can provide any further guidance on how sufficiency should be defined, and possibly, in so doing, the extent to which it considers the current level of plurality delivers against this.**
- 5.122 Absent such guidance, it may have to be left to the discretion of the reviewing body to consider sufficiency as part of the first periodic review of plurality. Ultimately, the reviewing body would need to reach a judgement on sufficiency and whether the status quo was sufficient or not.
- 5.123 For subsequent reviews, the previous reviews would provide some context. However, the dynamic nature of the market means that it would still be necessary to reach a judgement on sufficiency, taking into account the specific market context at the time of each review.

### Sustainability

- 5.124 One of the most difficult challenges for any plurality regime is that associated with commercial sustainability. Even at a national level, a number of news providers are unprofitable, and this may already require us to accept a level of plurality which is lower than we would ideally like.
- 5.125 As we noted above, the growth of online news is the primary driver of market change. The increasing power of connected devices and the availability of greater bandwidth have enabled the online space to become a multi-media and multi-platform arena in which news organisations can compete with each other. However, this increase in competitive intensity may also drive the pressure for industry consolidation in order to reduce costs and potentially to ensure sustainability of provision, requiring further compromises in the level of plurality we accept.
- 5.126 This tension between plurality and commercial sustainability is exacerbated as we look at smaller geographic units. At a local level, ongoing economic viability already appears to be the predominant issue. The same may be true of the UK nations and English regions. In trying to secure multiple voices, there is a risk of ending up with none, because the market may only sustain one commercial provider and consolidation or exit may be needed to secure that. This may mean a choice between a local commercial monopoly and no alternative to the BBC.

- 5.127 As part of our Invitation to Comment, The Ofcom Nations Advisory Committees also stressed the importance of considering plurality and sustainability at UK nations' levels, where the issue may be more linked to a "floor" to deliver a minimum level of plurality, rather than a "ceiling" or absolute limit.
- 5.128 The design of a future regime therefore needs to take into account the level of plurality that is likely to be sustainable within a particular area, both in the assessment of plurality concerns, and in the design of possible remedies.
- 5.129 **It is particularly important to ensure that when considering UK nations, English regions and local plurality concerns, any triggers and / or prohibitions are set at an appropriate level, taking sustainability into account.**
- 5.130 Given that plurality may be significantly threatened by issues of commercial sustainability, we have also considered whether there ought to be any positive 'levers' to address identified plurality concerns. A reviewing body might recommend levers in addition to, or in place of any remedies. As set out in Annex 3, we note that there are a number of regulatory obligations delivered today by the Public Service Broadcasters in return for implicit subsidies such as EPG prominence and DTT capacity. Parliament may decide that in the interests of promoting plurality it is appropriate to revisit these, and further mechanisms.
- 5.131 **We recommend that the Government and Parliament consider how to strike the right balance between promoting plurality on the one hand and encouraging economically sustainable news media organisations on the other. This may require consideration of the case for regulatory intervention to support and sustain plurality.**

### Innovation

- 5.132 The Secretary of State noted in his questions to us the importance of maintaining incentives to invest and innovate.
- 5.133 Even where plurality can be achieved, it is important that the regulatory framework does not result in poor incentives for investment and innovation. In formulating our recommendations, we have had regard for not creating perverse outcomes and strived to promote market certainty. In particular we have recommended:
- A fixed time based review offering market certainty, rather than continuous regulatory scrutiny based on metric triggers.
  - A cautious approach to absolute limits and prohibitions, noting that they should be targeted to particular concerns and be ultimately determined by Parliament.
  - The limited use of discretion to trigger a review, given the uncertainty it creates.
  - The ability to reconsider the appropriateness and levels of absolute limits, and the measurement framework itself, as part of any periodic review of plurality.

## The BBC

5.134 The question we have been asked is “Whether or how should a framework include the BBC?”

### The BBC's role and regulatory context

5.135 The BBC was established by Royal Charter in 1927 as a Public Corporation. Today, the BBC's constitutional foundations and funding model remain largely unchanged. The Corporation continues to be funded from a licence fee, with a supplementary commercial dividend from BBC Worldwide. Regulatory oversight is the responsibility of the BBC Trust and Ofcom.

5.136 Over eighty years, the BBC through its funding model and constitution has been a source of continuity in the news media market in the face of cyclical and structural economic change and rapid technology developments that have challenged the sustainability of other news media.

5.137 The BBC's role in news and current affairs is long-established, and is fundamental to its public purpose:

- Successive Charters and Agreements have progressively emphasised the importance to the BBC of its news and current affairs output.
- The BBC serves the public interest, as captured in six Public Purposes. News and current affairs contributes to Purpose 1 – sustaining citizenship and civil society<sup>46</sup>.

5.138 Editorially the BBC is subject to a range of regulatory controls:

- The BBC is bound by a requirement to be both independent and impartial, as set out in its Editorial Guidelines.
- Standards are dealt with by the Trust's Editorial Standards Committee and, where relevant, by Ofcom.

### The BBC's position in the market today

5.139 The BBC is estimated to have spent c£430m<sup>47</sup> on news and current affairs output during 2011 – more than the remaining UK television and radio news broadcasters combined. The scope of its news media output covers TV, radio and online and ranges from international, national, nations, regional and local news for UK audiences to the BBC World Service.

5.140 The BBC is the market leader in each platform where it has a news presence – 74% of television news hours; a high (though unquantifiable) proportion of radio news output and 46% of all page views amongst the top 50 online news providers.

5.141 Given the scale of the BBC's services and reach, some stakeholders believe there is a potential risk that the BBC might crowd out competing news organisations and thus reduce diversity of voices.

<sup>46</sup> <http://www.bbc.co.uk/aboutthebbc/insidethebbc/howweare/publicpurposes/citizenship.html>

<sup>47</sup> Source: Mediatique report for Ofcom 2012.

5.142 We note however that under the BBC's current regulatory framework any proposals from the BBC Executive for significant changes are already subject to scrutiny by the BBC Trust. Their Public Value Test includes a Market Impact Assessment (MIA), conducted by Ofcom, which assesses the effect of the proposed service on other services in the market, both now and in the future. This mechanism is not explicitly intended to address issues of plurality, but it is clearly relevant.

**5.143 The BBC's significant scale and leading position in three of the four platforms mean that it must be fully included in any assessment for any review.**

#### Should the BBC trigger a review?

5.144 The BBC has argued that it should not trigger a review nor be subject to new regulation, because a 'triple lock' binds the BBC to the public interest in relation to plurality as a result of:

- A Charter and Agreement that sets its objects.
- Licence payers who have particularly high expectations of the BBC.
- Detailed governance and editorial processes (going well beyond the Broadcasting Code).

5.145 However, other news organisations also have reputable brands and high audience expectations. Moreover, many have detailed governance and editorial processes. These characteristics are not unique to the BBC.

5.146 None the less, the Charter Review process, which occurs every ten years, is a rigorous and detailed inquiry into the purpose and function of the BBC and requires Parliamentary approval. This is unique and ensures that the BBC's aims are aligned with the public interest.

**5.147 On the basis of a new proposed plurality regime involving periodic reviews, with the BBC included in such reviews, there is no separate need for the BBC's position itself to trigger a review.**

#### Internal Plurality

5.148 The BBC's scale in the news media market, where it is the clear leader in three of the four platforms, also means that it is important it should be internally plural – with a diversity of voices and viewpoints both *across* and *within* its services and programmes.

5.149 At the same time, the BBC faces pressures to further centralise its newsgathering activities. Such moves help reduce expenditure, but they may reduce internal plurality.

5.150 The BBC adopts different approaches across its news programmes and services to seek to serve all demographic groups. This segmented approach aims to maximise overall reach to BBC journalism. However, it does not guarantee any individual consumer is subject to a sufficient diversity of viewpoints.

5.151 Taken together, these result in a potential risk that people who rely primarily on the BBC for news of not being exposed to a sufficient diversity of perspectives, contributors, subjects or treatment of news stories.

- 5.152 Moreover, there is no mention in the BBC's public purposes of promoting internal plurality. Nor is it an explicit function of the Trust to assess the plurality implications of the BBC's current position or positively to promote plurality – within the BBC or in the wider market.
- 5.153 While the BBC's existing governance processes play an important role, we note that these focus on impartiality. Impartiality is not synonymous with internal plurality, and is therefore alone not sufficient to ensure the BBC does not prompt any plurality concerns. Furthermore, in the PIT report, we recognised that the impartiality rules may contribute as a *safeguard* against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it.
- 5.154 The public policy goals set out above and in paragraph 3.5 – in particular, the desire for informed citizenship – will be better served if the BBC positively promotes internal plurality – not just *between* different news programmes and services but also *within* them, to broaden the diversity of voices and viewpoints available to individual consumers, and citizens more broadly.
- 5.155 **We recommend the BBC Trust assesses the BBC's contribution to plurality, both internal and external, and considers establishing a framework for measuring and evaluating this periodically.**

## **Annex 1**

### **Request from the Secretary of State to Ofcom seeking advice on measuring media plurality**

CMS 188245/mk



department for  
**culture, media  
and sport**

Ed Richards,  
Chief Executive  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London  
SE19HA

October 2011

*Dear Ed,*

## **ENSURING MEDIA PLURALITY**

We have discussed my request that Ofcom should undertake some work into the feasibility of measuring media plurality across platforms, and recommend the best approach. This would build on the good work you have already undertaken as part of your analysis of the proposed Sky/News Corp merger and would look at which platforms should be included (for example, websites) and consider the best way to take account of the BBC's position in the market. In addition, I would be grateful if you could also consider how practical it is to set limits which would protect plurality without unnecessarily restricting growth or producing perverse incentives.

Specifically, the questions I am requesting that you answer are:

- a) What are the options for measuring media plurality across platforms? What do you recommend is the best approach?
- b) Is it practical or advisable to set absolute limits on news market share?
- c) What could trigger a review of plurality in the absence of a merger, how might this be monitored and by whom?
- d) Could or should a framework for measuring levels of plurality include websites and if so which ones?



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e) Whether or how it should include the BBC?

I also mentioned in my RTS speech the possibility of extending the current media plurality public interest test to address issues of concentration arising from organic growth or market exit. There are potentially interactions between these two approaches and so I am also interested in whether there may be options for potential discretionary levels to be applied, for example, which could be exceeded depending on the outcome of a public interest test.

I am grateful to you for undertaking this work. In terms of timetable, I understand that the Leveson Inquiry would find it very helpful to have input from you by June. This would not need to be a completed analysis, and there may be gaps which you can continue to work on in the lead up to the White Paper and beyond.

Please do not hesitate to get in touch with my officials if they can give you any help in progressing this work.

*Yours ever*

*Jeremy*

**Rt Hon Jeremy Hunt MP**  
**Secretary of State for Culture, Olympics, Media and Sport**

## Annex 2

## Major news media providers in the UK and their titles/services

	Examples of UK-wide news services	Examples of nations, regional and local news services
BBC	UK and international TV news bulletins on BBC1-4 and 24 hour news channel  News bulletins on national analogue radio stations including speech orientated <i>Radio 4</i> and <i>Radio 5 Live</i>	<b>England:</b> 14 regional TV bulletins and 38 local radio stations (+ Channel Islands services) <b>Wales:</b> <i>Wales Today</i> (TV), <i>Radio Wales</i> , <i>Radio Cymru</i> . Also produces <i>Newyddion</i> for S4C <b>Scotland:</b> <i>Reporting Scotland</i> , <i>Newsnight Scotland</i> , <i>An Là</i> (TV), <i>Radio Scotland</i> (with regional opts), <i>Radio nan Gàidheal</i> <b>Northern Ireland:</b> <i>Newsline</i> (TV), <i>Radio Ulster</i> , <i>Radio Foyle</i>
ITN	Produces international and UK-wide news programming for Channel 3 licensees, Channel 4 and Channel 5	Produces ITV London news for ITV Plc
ITV Plc	<i>ITV News</i>	<b>England:</b> Produces 7 TV News bulletins in English regions – 6 with sub-opts. Also produces Channel Islands TV news and London News (from ITN) <b>Wales:</b> TV news bulletin for Wales
Channel 4	<i>Channel 4 News</i> (produced by ITN)	
Channel 5	<i>5 News</i> (produced by ITN)	
BSkyB Plc	<i>Sky News</i> 24 hour news channel Producer of IRN news for commercial radio (wholesale)	
STV Plc	<i>ITV News</i> (Produced by ITN)	<b>Scotland (Central):</b> TV news bulletin with sub-opts (East & West) <b>Scotland (North):</b> TV news with sub-opts (North & South)
UTV Plc	<i>ITV News</i> (Produced by ITN) <i>TalkSport</i> (radio)	<b>Northern Ireland:</b> TV news bulletin <i>UTV Live</i> 17 local analogue radio licences include: <i>U105</i> (Belfast) and stations in Wales and northern England
News International (News Corporation)	<i>The Sun</i> , <i>The Sun on Sunday</i> , <i>The Times</i> and <i>The Sunday Times</i> newspapers	Scottish editions of UK-wide titles Northern Ireland editions of <i>Sun</i> and <i>Sun on Sunday</i> Irish version of the <i>Sunday Times</i> has some slight variations for the Northern Ireland distributed edition
Associated and Northcliffe Media (DMGT Plc)	<i>Daily Mail</i> and <i>The Mail on Sunday</i> newspapers [Associated]	Scottish edition of UK-wide titles c. 93 regional titles include <i>Metro</i> [Associated], <i>Bristol Evening Post</i> [Northcliffe] <i>London Evening Standard</i> (25%)
Trinity Mirror Plc	<i>Daily Mirror</i> , <i>Sunday Mirror</i> , <i>The People</i> newspapers	Scottish edition of <i>Sunday Mirror</i> . Northern Ireland editions of <i>Mirror</i> and <i>Sunday Mirror</i> 130 + titles including: <i>Daily Record</i> , <i>Sunday Mail</i> (Scotland), <i>Western Mail</i> , <i>Wales on Sunday</i> , <i>Daily Post</i> (Wales), <i>Manchester Evening News</i> , <i>Birmingham Mail</i>
Northern & Shell	<i>Express / Sunday Express</i> newspaper <i>Star / Sunday Star</i> newspaper <i>Channel 5</i>	Scottish edition of the <i>Express</i> Northern Ireland edition of the <i>Star</i>
Guardian Media Group	<i>Guardian</i> and <i>Observer</i> newspapers	14 local analogue radio licences include stations with the <i>Smooth Radio</i> and <i>Real Radio</i> branding
Lebedev Holdings	<i>Independent</i> and <i>i</i> newspapers	<i>London Evening Standard</i> (75%)
Telegraph Media Group (Press Holdings)	<i>Daily Telegraph</i> and <i>Sunday Telegraph</i> newspapers, <i>Spectator</i> magazine [Press Holdings]	Scottish edition of UK-wide titles
Pearson Plc	<i>Financial Times</i> <i>Economist</i> magazine (50%)	
Johnston Press Plc		c. 240 newspaper titles including <i>The Scotsman</i> (Scotland), <i>News Letter</i> (Northern Ireland), <i>Yorkshire Post</i>
Newsquest (Gannett)		c. 187 newspaper titles including, <i>Herald/Sunday Herald</i> (Scotland), <i>Northern Echo</i> (Durham), <i>Oxford Mail</i>
Global Radio	<i>Classic FM</i>	65 local analogue radio licences include stations with <i>Heart</i> and <i>Capital</i> brands in England, Wales and Scotland, <i>LBC</i> (London)
Bauer		41 local analogue radio licences including major city stations in N. England, Scotland and NI. Stations include <i>City Talk 105.9</i> (Liverpool), <i>Wave 105</i> (southern England)

Source: Ofcom, The Newspaper Society, company websites (as of May 2012).

NB: List of groups is not exhaustive but includes selected providers representing some of the largest providers. Radio services relate to analogue radio although other services may be available via the DAB platform. All providers listed have an online presence. Other groups active within the nations include Independent News and Media (owner of the Belfast Telegraph) and DC Thomson - publisher of the Sunday Post, and daily titles, the Courier (Dundee) and Press & Journal (Aberdeen) among others. In Wales, NWN Media publishes newspapers in North Wales and S4C broadcasts TV news produced by the BBC. Other news organisations include independently owned news outlets e.g. the Northern Ireland daily newspaper the Irish News.

## Annex 3

# Positive obligations on public service broadcasters

### Overview

- A3.1 Ofcom regulates Channel 3, Channel 4 and Channel 5 through licence conditions intended to promote the fulfilment of the purposes of public service television. Section 279 of the Communications Act 2003 requires Ofcom to impose conditions on public service broadcasters as appropriate for securing—
- (a) that the programmes included in the channel include news programmes and current affairs programmes;
  - (b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and
  - (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.
- A3.2 Ofcom must also secure that an appropriate amount of time is allocated to the broadcasting of news and current affairs programmes and that it is appropriately split between peak viewing times and other times.
- A3.3 The Channel 3 licences must secure the nationwide broadcasting of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom. The Channel 3 licence holders must appoint an “appointed news provider”.
- A3.4 Finally, Ofcom is required to set conditions requiring that PSBs carry party political broadcasts and referendum campaign broadcasts.
- A3.5 The BBC is not licensed by Ofcom and is not subject to these requirements. However, the Agreement between the Secretary of State and the BBC Trust (July 2006) states that: “the Trust must, amongst other things, seek to ensure that the BBC gives information about, and increases understanding of, the world through accurate and impartial news, other information, and analysis of current events and ideas.”
- A3.6 In doing so, the Trust must have regard to “the need to promote understanding of the UK political system (including Parliament and the devolved structures), including through dedicated coverage of Parliamentary matters, and the need for the purpose remit to require that the BBC transmits an impartial account day by day of the proceedings in both Houses of Parliament”;
- A3.7 The Trust must also seek to ensure that the BBC “makes people in the UK aware of international issues and of the different cultures and viewpoints of people living outside the UK through news and current affairs...and brings high-quality international news coverage to international audiences.”
- A3.8 Amongst the TV channels which the BBC undertakes to provide in the agreement are: The BBC News Channel (24-hour channel providing news, analysis and other informational programmes); and BBC Parliament: (a channel providing substantial live coverage of debates and committees of the UK's Parliaments and Assemblies,

and other political coverage). Amongst the radio channels which the BBC undertakes to provide are: Radio 2, Radio 4, BBC Radio Five Live, Sports Extra and BBC Asian Network, all of which must include some news content.

### Obligations on the PSBs

- A3.9 With the decline in analogue revenues over the past decade, and in recognition of the inevitable tension between the networks' willingness to invest in public service programming and the requirement for commercial organisations to maintain sustainable businesses, Ofcom has sought to identify and prioritise those aspects of public service content particularly valued by audiences.
- A3.10 Ofcom last examined the sustainability of commercial public service broadcasting during its second PSB review, completed in 2009. At that time, we acknowledged significant changes to the broadcasting environment brought about by the growth of multi-channel television and the increasing pressures this had placed on the public service broadcasters. In particular, we recognised a growing tension between the incentives on commercial PSB licence holders to sustain profitable business models while continuing to invest in a wide range of public service content.
- A3.11 As part of that review, following extensive consultation and research, and in light of the support from most respondents to a continuing role for commercial networks within the public service framework, we advocated a new approach that would see Channel 3 and Channel 5 maintaining important public service commitments after 2014.

### The benefits of PSB status

- A3.12 The principal benefits associated with the licences in the next licence period will be the right to gifted or reserved DTT capacity and the right to appropriate EPG prominence. Although there are other intangible benefits associated with holding a PSB licence, including the additional media coverage that PSB programme schedules receive and viewer awareness of channel brands, we do not consider that it is possible practically to quantify these at present. Nevertheless, we consider the potential loss of these benefits could represent a risk to an incumbent broadcaster.
- A3.13 Channel 3 licence holders have the right to reserved capacity on Multiplex 2 as well as joint ownership alongside Channel 4. This means that Channel 3 licence holders only need to pay their share of the multiplex costs to secure carriage, rather than the market rate on a commercial multiplex. An additional benefit associated with reserved capacity on a PSB multiplex is that PSB multiplexes cover 98.5% of the UK population, rather than the 90% achieved by commercial multiplexes.
- A3.14 Capacity is reserved for Channel 5 on Multiplex 2 and on Multiplex A. Unlike the Channel 3 licence holders, however, Channel 5 is required to agree commercial carriage fees with the multiplex operators. The benefits of reserved DTT capacity are therefore much higher for Channel 3 licensees than for Channel 5.
- A3.15 The Channel 3 and Channel 5 licences also afford the holders the right to 'appropriate prominence' on Electronic Programme Guides ('EPGs'). Being placed on the first page of the EPG means that the licensees' PSB channels are easily accessible to viewers. As such, there may be a significant benefit associated with this right since without EPG prominence fewer viewers may watch the programmes on prominent channels.